

# Commodity Derivatives Transaction Act

(Act No. 239 of August 5, 1950)

Chapter I General Provisions (Articles 1 and 2)

Chapter II Commodity Exchanges

Section 1 General Provisions (Articles 3 through 6)

Section 2 Member Commodity Exchanges

Subsection 1 Establishment (Articles 7 through 29)

Subsection 2 Members (Articles 30 through 45)

Subsection 3 Organization (Articles 46 through 63)

Subsection 4 Accounts (Articles 64 through 68-3)

Subsection 5 Dissolution and Liquidation (Articles 69 through 77)

Section 3 Incorporated Commodity Exchanges

Subsection 1 General Provisions (Articles 78 through 96)

Subsection 2 Self-Regulatory Committees (Articles 96-2 through 96-18)

Subsection 3 Major Shareholders (Articles 96-19 through 96-24)

Subsection 4 Commodity Exchange Holding Companies (Articles 96-25 through 96-43)

Section 4 Transactions in Commodity Markets (Articles 97 through 120)

Section 5 Entity Conversion (Articles 121 through 138)

Section 6 Mergers

Subsection 1 General Provisions (Article 139)

Subsection 2 Mergers between Member Commodity Exchanges (Articles 140 and 141)

Subsection 3 Mergers between Member Commodity Exchanges and Incorporated Commodity Exchanges (Articles 142 and 143)

Subsection 4 Merging Procedures for Member Commodity Exchanges (Articles 144 through 144-4)

Subsection 5 Merging Procedures for Incorporated Commodity Exchanges

Division 1 Procedures for Incorporated Commodity Exchanges Surviving an Absorption-Type Merger (Articles 144-5 through 144-12)

Division 2 Procedures for Incorporated Commodity Exchanges Dissolved in a Consolidation-Type Merger (Articles 144-13 through 144-19)

Division 3 Procedures for Incorporated Commodity Exchanges Established by a Consolidation-Type Merger (Articles 144-20 and 144-21)

Subsection 6 Effectuation of Mergers (Article 145 through 154)

Section 7 Supervision (Articles 155 through 160)

Section 8 Miscellaneous Provisions (Articles 161 through 166)

- Chapter III Commodity Clearing Organizations
  - Section 1 Commodity Clearing Organizations (Articles 167 through 187)
  - Section 2 Miscellaneous Provisions (Articles 188 and 189)
- Chapter IV Commodity Derivatives Business Operator
  - Section 1 Licensing (Articles 190 through 197-2)
  - Section 2 Eligible Consignors (Articles 197-3 through 197-10)
  - Section 3 Services (Articles 198 through 224)
  - Section 4 Mergers, Splits, and Business Transfers (Articles 225 through 230)
  - Section 5 Supervision (Articles 231 through 240)
- Chapter IV-2 Commodity Derivatives Intermediary Service Providers
  - Section 1 General Provisions (Articles 240-2 through 240-8)
  - Section 2 Services (Articles 240-9 through 240-21)
  - Section 3 Supervision (Article 240-22 through 240-25)
  - Section 4 Miscellaneous Provisions (Article 240-26)
- Chapter V Commodity Futures Association
  - Section 1 General Provisions (Articles 241 through 244)
  - Section 2 Establishment (Articles 245 through 250)
  - Section 3 Association Members (Articles 251 through 253)
  - Section 4 Organs (Articles 254 through 258)
  - Section 5 Dispute Resolution (Articles 259 through 261)
  - Section 6 Dissolution (Article 262)
  - Section 7 Supervision (Articles 263 through 266)
  - Section 8 Miscellaneous Provisions (Articles 267 and 268)
- Chapter VI Consignor Protection Funds
  - Section 1 General Provisions (Articles 269 through 274)
  - Section 2 Members (Articles 275 through 277)
  - Section 3 Establishment (Articles 278 through 282)
  - Section 4 Management (Articles 283 through 299)
  - Section 5 Businesses (Articles 300 through 312)
  - Section 6 Dues (Articles 313 through 315)
  - Section 7 Finance and Accounting (Articles 316 through 321)
  - Section 8 Supervision (Articles 322 through 324)
  - Section 9 Dissolution (Articles 325 through 327)
- Chapter VII Miscellaneous Provisions (Articles 328 through 355)
- Chapter VIII Penal Provisions (Articles 356 through 375)
- Supplementary Provisions

## **Chapter I General Provisions**

(Purpose)

Article 1 The purpose of this Act is to ensure fairness in commodity price

formation, in the purchase and sale of and other transactions in commodities, and for persons consigned with transactions in commodity markets, etc., as well as to facilitate the production and distribution of commodities, by, inter alia, provide for the organization of commodity exchanges, the management of transactions in commodity markets, and other matters; and by ensuring their sound operation, as well as by ensuring that persons conducting commodity derivatives business do so appropriately, thereby contributing to the sound development of the national economy and to the protection of consigners, etc. in transactions in commodity markets, etc.

(Definitions)

Article 2 (1) The term "commodity" as used in this Act means the following things:

- (i) agricultural products, forest products, livestock products, fishery products, and food and drink among goods manufactured or processed using these products as ingredients or materials, and other goods specified by Cabinet Order;
  - (ii) minerals as prescribed in Article 3, paragraph (1) of the Mining Act (Act No. 289 of 1950), other minerals specified by Cabinet Order, and goods obtained by smelting or refining these minerals;
  - (iii) beyond what is set forth in the preceding two items, goods which are specified by Cabinet Order as ingredients or materials that are important to the national economy and are highly likely to be the subject of transactions similar to futures transactions due to extreme fluctuation of their prices (including those that are already the subject of futures transactions or those similar to futures transactions); and
  - (iv) electric power (limited to electric power that is subject to transactions by unit of a certain amount of electric power during a fixed period of time; the same applies hereinafter).
- (2) The term "commodity index" as used in this Act means a numerical value that comprehensively expresses the price level of two or more goods that are commodities, a numerical value calculated based on the price difference between one type of goods that are commodities, and the price of another type of goods that are commodities, or a numerical value calculated otherwise based on the prices of two or more types of commodities that are goods or electric power.
- (3) The term "futures transaction" as used in this Act means one of the following transactions conducted in a commodity market in accordance with the standards and methods specified by a commodity exchange:
- (i) a purchase and sale transaction in which the parties promise to deliver and take delivery of a commodity and its value at a fixed time in the future,

which the parties may settle by paying and receiving the difference in values if they sell or buy back the commodity that is the subject of the purchase and sale;

- (ii) a transaction in which the parties promise to pay and receive money calculated based on the difference between the contract price (meaning the price of a commodity for which the parties agree in advance (including a numerical value that expresses the price level of a single commodity or any other numerical value calculated based on the price of a single commodity; hereinafter the same applies in this item); the same applies hereinafter) and the actual price (meaning the actual price of the relevant commodity at a fixed time in the future; the same applies hereinafter);
- (iii) a transaction in which the parties promise to pay and receive money calculated based on the difference between the numerical value of a commodity index for which the parties agree in advance (hereinafter referred to as the "agreed figure") and the actual numerical value of the commodity index at a fixed time in the future (hereinafter referred to as the "actual figure");
- (iv) a transaction in which the first party agrees to grant the second party the right to close one of the following transactions between them by a unilateral manifestation of the second party's intention alone (hereinafter referred to as an "option") and the second party agrees to pay the value of that option:
  - (a) the transaction referred to in item (i);
  - (b) the transaction referred to in item (ii) (including equivalent transactions that are specified by a commodity exchange);
  - (c) the transaction referred to in the preceding item (including equivalent transactions that are specified by a commodity exchange);
  - (d) the transaction referred to in the following item (including equivalent transactions that are specified by a commodity exchange);
  - (e) the transaction referred to in item (vi) (including equivalent transactions that are specified by a commodity exchange).
- (v) a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second based on the rate of change in the agreed price for that commodity during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in the agreed price for that commodity during the period they have agreed to;
- (vi) a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second party based on the rate of change in the agreed-upon commodity index for that commodity during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in that agreed-

- upon commodity index during the period they have agreed to;
- (vii) a transaction which is similar to a transaction that is set forth in one of the preceding items and that is specified by Cabinet Order.
- (4) The term "commodity exchange" as used in this Act means a member commodity exchange or an incorporated commodity exchange.
- (5) The term "member commodity exchange" as used in this Act means a mutual association with a membership system that has been established based on this Act for the main purpose of opening the necessary markets for conducting futures transactions in commodities or commodity indices.
- (6) The term "incorporated commodity exchange" as used in this Act means a stock company that operates the necessary market for conducting futures transactions in commodities or commodity indices after obtaining the license referred to in Article 78.
- (7) The term "listed commodity" as used in this Act means one or two or more types of commodities that are goods or electric power specified by a commodities exchange in its articles of incorporation or operational rules as those required to be traded in a single commodity market, which are subject to the permission referred to in Article 9, the license referred to in Article 78, or the approval referred to in Article 155, paragraph (1) or Article 156, paragraph (1).
- (8) The term "listed commodity index" as used in this Act means one commodities index or two or more commodities indices specified by a commodities exchange in its articles of incorporation or operational rules as indices related to transactions which are required to be traded in a single commodity market, and are subject to the permission referred to in Article 9, the license referred to in Article 78, or the authorization referred to in Article 155, paragraph (1) or Article 156, paragraph (1).
- (9) The term "commodity market" as used in this Act means the market that a commodity exchange operates for each single kind of listed commodity or listed commodity index in order to carry out the transactions provided for in one of the following items in accordance with the category set forth in that item:
- (i) the commodity market for a listed commodity: among transactions set forth in paragraph (3), item (i), transactions set forth in item (ii) of that paragraph or transactions set forth in item (v) of that paragraph, or the transactions set forth in item (vii) of that paragraph related to the listed commodity, transactions that are specified by Cabinet Order as being similar to those transactions;
- (ii) the commodity market for a listed commodity index: among transactions set forth in paragraph (3), item (iii), transactions set forth in item (vi) of that paragraph, or the transactions set forth in item (vii) of that paragraph related to the listed commodity index, transactions that are specified by

Cabinet Order as being similar to those transactions;

(10) The term "transaction in a commodity market" as used in this Act includes, in addition to a transaction set forth in one of the items of the preceding paragraph, a transaction prescribed in one of the following items in accordance with the category set forth in that item, which a commodity exchange has decided to effect pursuant to the provisions of its articles of incorporation or operational rules:

- (i) the commodity market for a listed commodity: one of the following transactions:
  - (a) a transaction set forth in paragraph (3), item (iii) or (vi) related to a commodity index for which the goods or electric power subject to the commodity index constitute or include that listed commodity;
  - (b) a transaction set forth in paragraph (3), item (iv) related to a transaction set forth in (a), (b), or (d) of that item related to that listed commodity;
  - (c) a transaction set forth in paragraph (3), item (iv) related to a transaction set forth in (c) or (e) of that item related to a commodity index for which the goods or electric power subject to the index constitute or include that listed commodity;
  - (d) a purchase and sale transaction of that listed commodity (other than a transaction falling under the transaction set forth in paragraph (3), item (i); hereinafter the same applies in this item) ;
  - (e) a transaction in which the first party agrees to grant the second party the right to close a purchase and sale transaction between them for that listed commodity by a unilateral manifestation of the second party's intention alone (hereinafter referred to as "spot option") and the second party agrees to pay the value of that spot option;
  - (f) one of the following transactions related to a commodity index for which the listed commodity or the goods or electric power subject to the index constitute or include that listed commodity:
    - 1. a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second party based on the rate of change in the agreed price for a commodity during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in the agreed price for a commodity other than that commodity during the period they have agreed to;
    - 2. a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second party based on the rate of change in the agreed price for the commodity during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in

an agreed-upon commodity index during the period they have agreed to;

3. a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second party based on the rate of change in an agreed-upon commodity index during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in an agreed-upon commodity index during the period they have agreed to.
  - (g) a transaction in which the first party agrees to grant the second party the right to close one of the transactions listed in (f) above between them by a unilateral manifestation of the second party's intention alone (hereinafter referred to as a "specified swap option") and the second party agrees to pay the value of that specified swap option;
  - (h) a transaction which is similar to one of the transactions referred to in (a) through (g) and which is specified by Cabinet Order.
  - (ii) the commodity market for a listed commodity index: a transaction set forth in paragraph (3), item (iv) related to a transaction set forth in (c) or (e) of that item connected with that listed commodity index and any other transaction which is similar to those transactions and which is specified by Cabinet Order.
- (11) The term "commodity exchange holding company" as used in this Act means a stock company whose subsidiary company (meaning a subsidiary company prescribed in Article 3-2, paragraph (3)) is an incorporated commodity exchange incorporated with the authorization referred to in in Article 96-25, paragraph (1) or that has obtained the authorization referred to in that paragraph or the proviso to paragraph (3) of that Article.
- (12) The term "foreign commodity market" as used in this Act means a market that is similar to a commodity market and that is located in a foreign country.
- (13) The term "foreign commodity market transaction" as used in this Act means a transaction that is conducted in a foreign commodity market and that is similar to a transaction in a commodity market.
- (14) The term "over-the-counter commodity derivatives transaction" as used in this Act means any of the following transactions carried out outside a commodity market, foreign commodity market, or a financial instruments exchange market (meaning a financial instruments exchange market as defined in Article 2, paragraph (17) of the Financial Instruments and Exchange Act (Act No. 25 of 1948); the same applies hereinafter) (excluding transactions conducted at the facilities set forth in each of the items of Article 331):
- (i) a purchase and sale transaction in which the parties promise to deliver and take delivery of a commodity and its value at a fixed time in the future, which the parties may settle by paying and receiving the difference in values

- if they sell or buy back the commodity that is the subject of the purchase and sale;
- (ii) a transaction in which the parties promise to pay and receive money calculated based on the difference between the contract price and the actual price, or a transaction similar to the transaction;
  - (iii) a transaction in which the parties promise to pay and receive money calculated based on the difference between the agreed figure and the actual figure, or a transaction similar to the transaction;
  - (iv) a transaction in which the first party agrees to grant the second party the right to close one of the following transactions between them by a unilateral manifestation of the second party's intention alone, and the second party agrees to pay the value of the transaction; or a transaction similar to the transaction:
    - (a) the transaction set forth in item (i);
    - (b) the transaction set forth in item (ii);
    - (c) the transaction set forth in the preceding item;
    - (d) the transaction set forth in item (vi).
  - (v) a transaction in which the first party agrees to grant the second party the right, by a unilateral manifestation of the second party's intention alone, to effect a transaction in which the parties pay and receive money calculated based on the difference between the price they have agreed upon in advance as the price for a commodity in the event that the party manifests the intention to close the transaction (including a numerical value that expresses the price level of the commodity or any other numerical value calculated based on the price of the commodity; hereinafter the same applies in this item), or the numerical value they have agreed upon in advance as that for the commodity index in the event that the party manifests that intention, and the current price of that commodity or numerical value of that commodity index at the time that the party actually manifests that intention, and the second party agrees to pay the value of the transaction; or a transaction similar to the transaction;
  - (vi) a transaction in which the parties mutually promise that, for a commodity whose volume they have set, the first party will pay money to the second party based on the rate of change in the agreed price or commodity index for a commodity during the period they have agreed to, and the second party will pay money to the first party based on the rate of change in the agreed price or commodity index for a commodity during the period they have agreed to; or a transaction similar to the transaction;
  - (vii) beyond what is set forth in the preceding items, a transaction which has a similar economic nature as those transactions and which is specified by Cabinet Order as a transaction for which it is found necessary to ensure the



public interest or the protection of the parties to the transaction.

- (15) The term "commodity derivatives transaction" as used in this Act means a transaction in a commodity market, a foreign commodity market transaction, or an over-the-counter commodity derivatives transaction (other than an over-the-counter commodity derivatives transaction specified by Cabinet Order as one that, in consideration of its content and other factors, is found unlikely to result in insufficient protection of the parties to the transaction, and an over-the-counter commodity derivatives transaction conducted with or on behalf of a party specified by order of the competent ministry as being highly skilled in those transactions or with a stock company whose amount of stated capital is at least the amount specified by order of the competent ministry (such an excluded transaction is referred to as an "excluded over-the-counter commodity derivatives transaction" in Article 349, paragraph (1))).
- (16) The term "trading participant" as used in this Act means a person who may participate in transactions in a commodity market that is operated by an incorporated commodity exchange, based on the trading qualification granted pursuant to the provisions of Article 82, paragraph (1).
- (17) The term "business of assuming commodity transaction debts" as used in this Act means the business of assuming the liabilities arising from transactions in a commodity market.
- (18) The term "commodity clearing organization" as used in this Act means a person that has been licensed by or has obtained the approval of the competent minister pursuant to the provisions of Article 167 or Article 173, paragraph (1) to engage in the business of assuming commodity transaction debts.
- (19) The term "clearing participant" as used in this Act means a person that becomes the other party to the business of assuming commodity transaction debts conducted by a commodity clearing organization, based on the qualification granted pursuant to the provisions of Article 174, paragraph (1).
- (20) The term "commodity clearing transaction" as used in this Act means a transaction in a commodity market that a clearing participant conducts, which has been entrusted to do so by the member or trading participant (hereinafter referred to as a "member, etc.") of a commodity exchange, pursuant to the provisions of the operational method statement of a commodity clearing organization, on the condition that the commodity clearing organization will be made to assume the liabilities arising from the transaction and that the member, etc. will be made to close the transaction on behalf of the clearing participant.
- (21) The term "transaction in a commodity market, etc." as used in this Act means one of the following acts:
- (i) a transaction in a commodity market;
  - (ii) acting as the intermediary, broker, or agent for the consignment of the act

- set forth in the preceding item;
- (iii) acting as a broker in consigning a person with a commodity clearing transaction; or
  - (iv) acting as the intermediary, broker, or agent for the consignment of the act set forth in the preceding item.
- (22) The term "commodity derivatives business" as used in this Act means the business of engaging in one of the following acts in the course of trade (other than an act specified by Cabinet Order as one that, in consideration of its content and other factors, is found unlikely to result in insufficient protection of the consignor or the counterparty to an over-the-counter commodity derivatives transaction (hereinafter referred to as the "consignor, etc."); other than an act of conducting an over-the-counter commodity derivatives transaction with the party specified by order of the competent ministry which is referred to in paragraph (15) or with a stock company whose amount of stated capital is at least the amount specified by order of the competent ministry which is referred to in that paragraph; and other than acting as the intermediary, broker, or agent for those persons in an over-the-counter commodity derivatives transaction):
- (i) accepting consignment of a transaction in a commodity market (other than a commodity clearing transaction) or acting as the intermediary, broker, or agent for consignment of such a transaction;
  - (ii) accepting consignment of intermediation of consignment of a commodity clearing transaction or acting as the intermediary, broker, or agent for consignment of the transaction;
  - (iii) accepting consignment of a foreign commodity market transaction (other than a transaction that is similar to a commodity clearing transaction) or acting as the intermediary, broker, or agent for consignment of the transaction;
  - (iv) among the foreign commodity market transactions, accepting consignment of brokerage of consignment of a transaction that is similar to a commodity clearing transaction, or acting as the intermediary, broker, or agent for consignment of such a transaction
  - (v) conducting an over-the-counter commodity derivatives transaction or acting as the intermediary, broker, or agent for the transaction.
- (23) The term "commodity derivatives business operator" as used in this Act means a person licensed by the competent minister pursuant to the provisions of Article 190, paragraph (1) to conduct commodity derivatives business.
- (24) The term "commodity transaction contract" as used in this Act means a contract for a commodity derivatives business operator to perform an act set forth in one of the items of paragraph (22) with or on behalf of a customer.
- (25) The term "eligible consignor" as used in this Act means the following

persons:

- (i) a commodity derivatives business operator;
  - (ii) a commodities investment advisor as prescribed in Article 2, paragraph (4) of the Act Regulating the Commodity Investment Business (Act No. 66 of 1991) (hereinafter referred to as a "commodities investment advisor");
  - (iii) a person specified by order of the competent ministry as having expert knowledge of and experience with commodity derivatives transactions;
  - (iv) the State
  - (v) the Bank of Japan;
  - (vi) members, etc. of a commodity exchange;
  - (vii) members, etc. of a facility equivalent to a commodity exchange in a foreign state;
  - (viii) a consignor protection fund as prescribed in Chapter VI and any other corporation specified by order of the competent ministry, other than one as set forth in the preceding items;
- (26) The term "eligible commercial person" as used in this Act means a person who is either the other party to a commodity transaction contract whose conclusion is solicited by a commodity derivatives business operator, a person filing an application to conclude a commodity transaction contract with a commodity derivatives business operator, or a person who concludes a commodity transaction contract with a commodity derivatives business operator and who in the course of trade engages in the purchase and sale of goods that are commodities underlying the commodity derivatives transaction conducted under the commodity transaction contract or goods specified by order of the competent ministry as being related to the transaction, acts as a mediator, intermediary or agent for the purchase and sale in the course of trade, or in the course of trade engages in the production, the processing or the use of those goods, or a person who in the course of trade engages in the purchase and sale of electric power that is a commodity underlying the transaction, acts as a mediator, intermediary or agent for the purchase and sale of electric power, or conducts other acts specified by order of the competent ministry in the course of trade, provided that person is a corporation satisfying the requirements specified by order of the competent ministry (excluding corporations that are eligible consignors).
- (27) The term "underlying commodity" as used in this Act means the commodity subject to transaction in a commodity market, foreign commodity market transaction, or over-the-counter commodity derivatives transaction, or a commodity underlying the commodity index subject to those transactions.
- (28) The term "commodity derivatives intermediation services" as used in this Act means accepting consignment by a commodity derivatives business operator to act as the intermediary prescribed in one of the items of paragraph

(22) on behalf of that commodity derivatives business operator, in the course of trade.

(29) The term "commodity derivatives intermediary service provider" as used in this Act means a person that has obtained the registration of the competent minister pursuant to the provisions of Article 240-2, paragraph (1).

## **Chapter II Commodity Exchanges**

### **Section 1 General Provisions**

(Scope of Business)

Article 3 (1) A commodity exchange must not conduct business other than the business of opening the necessary markets for effecting futures transactions for a commodity or commodity index (hereinafter referred to as the "business of opening a commodity market"), appraising the quality of listed commodities, issuing publications, and business incidental thereto; provided, however, that a commodity exchange that obtains the authorization of the competent minister pursuant to order of the competent ministry may engage in business that is connected with the opening a commodity market and business incidental thereto; the business of opening a market for trading carbon dioxide equivalent quotas (meaning carbon dioxide equivalent quotas as prescribed in Article 2, paragraph (6) of the Act on Promotion of Global Warming Countermeasures (Act No. 117 of 1998); the same applies hereinafter) and business incidental thereto; the business of opening a financial instruments market (meaning a financial instruments market as prescribed in Article 2, paragraph (14) of the financial instruments and exchange Act; hereinafter the same applies) and business incidental thereto (limited to cases in which the business is conducted by an incorporated commodity exchange); or perform financial instruments debt assumption services, etc. (meaning financial instruments obligation assumption services, etc. as prescribed in Article 156-3, paragraph (1), item (vi) of that Act; the same applies hereinafter) and business incidental thereto.

(2) The competent minister may attach conditions to the authorization referred to in the proviso to the preceding paragraph.

(3) The conditions referred to in the preceding paragraph must be the minimum necessary to ensure the public interest or the fairness of transactions, or for protecting the consignors.

(4) If an application is filed for the authorization referred to in the proviso to paragraph (1) and the competent minister finds that the applicant's engagement in the business which the application concerns is likely to impair confidence in the public nature of the business of the commodity exchange or to obstruct the sound and proper administration of the business of opening a commodity market or business incidental thereto, the minister must not grant

the authorization.

(Scope of Subsidiary Companies)

Article 3-2 (1) A commodity exchange must not have a company other than one engaging in the business of opening a commodity market or business incidental thereto as its subsidiary company; provided, however, that a commodity exchange that has obtained the authorization of the competent minister pursuant to order of the competent ministry may have as its subsidiary company a company engaging in business that is connected with the business of opening a commodity market and business incidental thereto; a company engaging in the business of opening markets for trading carbon dioxide equivalent quotas and business incidental thereto; a company engaging in the business of opening financial instruments exchange markets and business incidental thereto; or a company engaging in business that is connected with the opening of a financial instruments exchange market and business incidental thereto.

(2) The provisions of paragraphs (2) through (4) of the preceding Article apply mutatis mutandis to the authorization referred to in the proviso to the preceding paragraph. In such a case, in paragraph (4) of that Article, the phrase "the business which the application concerns" is deemed to be replaced with "the subsidiary company which the application concerns" and the term "business of opening a commodity market" is deemed to be replaced with "the commodity exchange's opening of a commodity market".

(3) The term "subsidiary company" as used in the preceding two paragraphs means a company in which a corporation holds the majority of all shareholders' or all members' voting rights (for a stock company, this excludes voting rights of shares that may not be exercised for all matters that are subject of resolution at a shareholders meeting, and includes voting rights of shares that are deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); hereinafter the same applies in this paragraph and in Article 196, paragraph (2)). In such a case, a company in which a corporation and one or more of its subsidiary companies hold the majority of all shareholders' or members' voting rights, or in which one or more of a corporation's subsidiary companies hold the majority of all shareholders' or members' voting rights, is deemed to be the subsidiary company of that corporation.

(Name or Trade Name)

Article 4 (1) Commodity exchanges must use the characters "取引所" (pronounced "torihikijo", meaning "exchange") in its name or trade name.

(2) A person that is not a commodity exchange must not use a word in its name

or trade name which could give rise to the misconception that it is a commodity exchange.

(Restriction on the Opening of Markets)

Article 5 (1) Commodity exchanges must not open a market (including a commodity market for which its expiration date specified in the articles of incorporation has passed, or for which the term for a change of scope as prescribed in Article 11, paragraph (4), or Article 102, paragraph (3) has ended) other than the commodity markets prescribed by the articles of incorporation (in the case of an incorporated commodity market, the articles of incorporation or operational rules; hereinafter the same applies in this paragraph and Article 105).

(2) Commodity exchanges must not open two or more commodity markets for a single kind of listed commodity or listed commodity index.

(Self-Regulatory Services)

Article 5-2 (1) Commodity exchanges must perform self-regulatory services in an appropriate manner, in accordance with this Act and its articles of incorporation and other rules, in order to ensure the fairness of transactions in the commodity market, as well as to protect consignors.

(2) The term "self-regulatory services" as used in the preceding paragraph means the following services conducted in respect of a commodity market:

(i) the investigation of members', etc. compliance with this Act, orders based on this Act, or dispositions made by the competent minister based on this Act (hereinafter referred to as "this Act, etc." in Article 96-22, Article 96-34, Article 96-40, Article 159, Article 160, and Article 165), with the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and other rules of the commodity exchange, and with the principle of good faith in transactions;

(ii) business related to expulsion and other dispositions against members, etc.;

and

(iii) other business specified by order of the competent ministry as necessary for ensuring the fairness of transactions in a commodity market and protecting consignors.

(Prohibition of Establishing Facilities Similar to Commodity Markets)

Article 6 (1) It is prohibited for any person to establish a facility (excluding a financial instruments exchange market) in which transactions that are similar to futures transactions in commodities or commodity indices are conducted (including indices similar to commodity indices).

(2) It is prohibited for any person to conduct transactions that are similar to

futures transactions in a facility referred to in in the preceding paragraph.

## **Section 2 Member Commodity Exchanges**

### **Subsection 1 Establishment**

(Legal Personality)

Article 7 (1) A member commodity exchange is to be a corporation.

(2) Member commodity exchanges must not conduct business for profit.

(Address)

Article 8 The address of a member commodity exchange is the address at which its principal office is located.

(Permission for Establishment)

Article 9 A person seeking to establish a member commodity exchange must obtain the permission of the competent minister to do so.

(Requirements for Establishment)

Article 10 (1) In order to establish a member commodity exchange, 20 or more persons that seek to become its members must become the founders for each commodity market to be established.

(2) With regard to the founders, the persons prescribed in each of the following items in accordance with the category of commodity market set forth in that item must constitute the majority of the founders of a single commodity market:

- (i) a commodity market for a listed commodity: persons who have, in the course of trade, engaged in the purchase and sale of the goods or electric power included in the listed commodity (hereinafter referred to as "component products of listed commodities"), acted as an intermediary, broker, or agent for the purchase and sale, or in the course of trade, engaged in the production, the processing or the use of component products of listed commodities (in the case of electric power, engaged in the purchase or sale, acted as an, intermediary, broker, or agent for the purchase and sale, or conducted other acts specified by order of the competent ministry; hereinafter, these acts are referred to as the "purchase and sale, etc.") for one year or more on a continuous basis;
- (ii) the commodity market for a listed commodity index: persons who have, in the course of trade, engaged in the purchase and sale, etc. of the goods or electric power subject to the commodity index regarding the listed commodity index (hereinafter referred to as the "products underlying the listed commodity index") for one year or more on a continuous basis.

(Articles of Incorporation)

- Article 11 (1) The founders must prepare the articles of incorporation of the member commodity exchange, and if the articles of incorporation are prepared in the form of a document, the founders must sign the document or have their names and seals affixed to the document.
- (2) The following particulars must be stated or recorded in the articles of incorporation referred to in the preceding paragraph:
- (i) description of the business;
  - (ii) the name;
  - (iii) the office address;
  - (iv) the particulars concerning membership qualification;
  - (v) the amount of one unit of contribution and the timing and method of its payment;
  - (vi) the particulars concerning joining and withdrawing as a member;
  - (vii) the particulars concerning the guarantee funds and clearing margins;
  - (viii) the particulars concerning the sharing of costs among members;
  - (ix) the particulars concerning audits of and sanctions against members;
  - (x) the particulars concerning the fixed number of officers and their term of office and appointment;
  - (xi) the particulars concerning general meetings of members;
  - (xii) the particulars concerning the binding effect that the articles of incorporation, operational rules, entrustment contract regulations, and dispute resolution rules have on contracts between members concluded outside the commodity market;
  - (xiii) the following particulars concerning the commodity market:
    - (a) the listed commodity or listed commodity index;
    - (b) the types of transaction for each listed commodity or listed commodity index;
    - (c) the settlement method for transactions.
  - (xiv) the business year;
  - (xv) the particulars concerning the appropriation of surplus and disposal of losses;
  - (xvi) the means of public notice (meaning the means by which the member commodity exchange issues public notice (other than public notice that must be issued through publication in the Official Gazette pursuant to the provisions of this Act or other laws); the same applies hereinafter).
- (3) The amount of costs of establishment to be borne by the member commodity exchange and the remuneration that the founders are to receive does not come into effect unless it is stated or recorded in the articles of incorporation.
- (4) If the term of existence of the member commodity exchange, the expiration



date of the commodity market, or the term for a change of scope of the commodity market (meaning the term during which the scope of a listed commodity or a listed commodity index of a commodity market (excluding a fixed-term commodity market prescribed in Article 155, paragraph (3), item (ii)) can be changed (other than a discontinuation or narrowing of the scope; hereinafter the same applies in Article 155); hereinafter the same applies in this paragraph and Article 155) has been decided in addition to the particulars set forth in the items of paragraph (2), the term of existence, expiration date, or term for a change of scope is to be stated or recorded in the articles of incorporation of the member commodity exchange.

- (5) The articles of incorporation referred to in paragraph (1) may be prepared in the form of an electronic or magnetic record (meaning a record prepared in electronic form, magnetic form, or any other form that cannot be perceived by the human senses, which is used in computer data processing and specified by order of the competent ministry; hereinafter the same applies). In such a case, the measures in lieu of signing names or affixing the names and seals which are specified by order of the competent ministry must be taken for the information recorded in that electronic or magnetic record.
- (6) A member commodity exchange may specify one of the following means as the means of public notice in its articles of incorporation, in addition to the means of posting a notice at the office of the member commodity exchange:
- (i) publication in the Official Gazette;
  - (ii) publication in a daily newspaper that publishes information about current events;
  - (iii) electronic public notice (meaning, among the means of public notice, measures of making the information that is required to be publicized available to many and unspecified persons by an electronic or magnetic means (meaning an electronic or magnetic means prescribed in Article 2, item (xxxiv) of the Companies Act (Act No. 86 of 2005)), which is prescribed in that item; the same applies hereinafter).
- (7) If a member commodity exchange specifies in its articles of incorporation that the means set forth in item (iii) of the preceding paragraph is the means of public notice, it is sufficient for the member commodity exchange to specify in the articles of incorporation that electronic public notice is the means of public notice. In such a case, either of the means set forth in item (i) or (ii) of that paragraph may be specified as the means of public notice for cases in which public notice cannot be given by electronic public notice as a result of an accident or other unavoidable circumstances.
- (8) If a member commodity exchange issues a public notice as an electronic public notice, the member commodity exchange must do so continuously until the day specified in each of the following items in accordance with the category of

public notice set forth in that item:

- (i) a public notice stating that an objection may be raised within the period specified in the public notice: the day on which that period expires;
  - (ii) a public notice other than one set forth in the preceding item: the day on which one month has passed from the publication of the public notice.
- (9) The provisions of Article 940, paragraph (3), Article 941, Article 946, Article 947, Article 951, paragraph (2), Article 953, and Article 955 of the Companies Act apply mutatis mutandis when a member commodity exchange issues public notice pursuant to the provisions of this Act or other laws by electronic public notice. In such a case, the phrase "Notwithstanding the provisions of the preceding two paragraphs, in cases.... pursuant to these provisions" in Article 940, paragraph (3) of the Companies Act is deemed to be replaced with "Notwithstanding the provisions of Article 11, paragraph (8) of the Commodity Derivatives Transaction Act, in cases.... pursuant to that paragraph," the term "Article 440, paragraph (1)" in Article 941 of that Act is deemed to be replaced with "Article 68-3 of the Commodity Derivatives Transaction Act", and any other technical replacement of terms is specified by Cabinet Order.
- (10) In addition to the particulars set forth in the items of paragraph (2), the particulars which do not come into effect unless prescribed in the articles of incorporation pursuant to the provisions of this Act, and any other particulars that do not violate this Act, may be stated or recorded in the articles of incorporation of a member commodity exchange.

(Application for Membership)

Article 12 (1) Before establishing a member commodity exchange, the founders must notify persons seeking to become members of the member commodity exchange of the following particulars:

- (i) the particulars stated or recorded in the articles of incorporation;
  - (ii) the names or trade names and addresses of the founders;
  - (iii) the method, due date, and place for the payment of the contribution;
  - (iv) that the application for membership may be canceled if an organizational meeting has not been concluded by a certain time.
- (2) The president must notify persons seeking to become members after the establishment of a member commodity exchange of the following particulars:
- (i) the date of establishment;
  - (ii) the particulars stated or recorded in the articles of incorporation;
  - (iii) the names and addresses of the officers;
  - (iv) the method, due date, and place for the payment of the contribution.
- (3) A person seeking to become a member of a member commodity exchange (including a founder) must deliver to the founders (or to the president after the establishment of the exchange; the same applies in the following paragraph) a

document stating the person's name and address, the number of units of contribution that the person will make, and the listed commodity or listed commodity index that the person seeks to trade in the commodity market.

- (4) With the consent of the founders, in lieu of delivering the document referred to in the preceding paragraph, a person seeking to become the member of a member commodity exchange may provide the founders with the particulars that are required to be stated in the document referred to in that paragraph by electronic or magnetic means (meaning a means that makes use of an electronic data processing system or a means that makes use of any other information and communications technology, which is specified by order of the competent ministry; the same applies hereinafter) pursuant to the provisions of Cabinet Order. In such a case, the person seeking to become a member is deemed to have delivered the document referred to in that paragraph.

#### (Organizational Meetings)

- Article 13 (1) After preparing the articles of incorporation, the founders must invite persons seeking to become members, and hold the organizational meeting within five days after the day on which 10 days have passed since the due date for the payment of the contribution provided for in paragraph (1), item (iii) of the preceding Article.
- (2) The founders must pay the full amount of contribution before the organizational meeting.
- (3) Approval of the articles of incorporation and decisions about other matters that are necessary for the establishment of the member commodity exchange must be decided by a resolution of an organizational meeting.
- (4) The articles of incorporation may be amended at an organizational meeting; provided, however, that this does not apply to the matters concerning membership qualification.
- (5) Proceedings of the organizational meeting is decided by at least a two-thirds majority of the votes of the attendees, at a meeting in which at least half of the persons seeking to become members (limited to those that have paid the full amount of the contribution) are present.
- (6) If a resolution is adopted at an organizational meeting concerning the meeting's postponement or continuation, the provisions of the main clause of Article 59, paragraph (8) and paragraph (10) as applied *mutatis mutandis* pursuant to paragraph (8) of this Article do not apply.
- (7) The minutes of the proceedings of an organizational meeting must be taken pursuant to the provisions of order of the competent ministry.
- (8) The provisions of Article 33, the main clause of Article 59, paragraph (8), and Article 59, paragraph (10) apply *mutatis mutandis* to an organizational meeting; and the provisions of Article 830, Article 831, Article 834 (limited to

the part related to items (xvi) and (xvii)), Article 835, paragraph (1), Article 836, paragraphs (1) and (3), Article 837, Article 838, Article 846, and Article 937, paragraph (1) (limited to the part related to item (i) (g)) (excluding the part related to company auditors), of the Companies Act apply mutatis mutandis to an action for a declaratory judgment as to the absence or invalidity of a resolution at an organizational meeting or an action seeking the rescission of the resolution. In such a case, the phrase "the head office (or, in the case prescribed in item (i) (g), if the particulars set forth in the items of Article 930, paragraph (2) have been registered as a result of the resolution, the head office and the branch offices which the registration concerns)" in Article 937, paragraph (1) is to be deemed to be replaced with "the principal office of the member commodity exchange (or, in the case prescribed in item (i) (g), if the particular set forth in one of the items of Article 24, paragraph (2) of the Commodity Derivatives Transaction Act is registered as a result of the resolution, the principal office and the secondary office which the registration concerns)".

#### (Applications for Permission)

Article 14 (1) Following an organizational meeting, the founders must enter the following particulars in a written application for the permission referred to in Article 9, and submit the written application to the competent minister without delay:

- (i) the name;
- (ii) the location of the office;
- (iii) the listed commodity or listed commodity index;
- (iv) the names and addresses of the officers;
- (v) the names or trade names of the members and the listed commodity or listed commodity index of the commodity market in which the members conduct transactions.

(2) The articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, market transactions surveillance committee rules, and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

#### (Criteria for Permission and Hearing of Opinions)

Article 15 (1) If the competent minister finds that an application for the permission referred to in Article 9 conforms to the following criteria, the minister must give permission:

- (i) the volume of transactions is expected to be sufficient for ensuring fair and smooth futures transactions in the listed commodity or listed commodity

index which the application concerns, and in light of the status of transactions of the component products of listed commodities or the products underlying the listed commodity index (hereinafter referred to as the "component products of listed commodities, etc."), it is necessary and appropriate for a member commodity exchange on which those futures transactions are conducted to be established in order to facilitate the production and distribution of the component products of listed commodities, etc.;

- (ii) if the founders seek to open a commodity market for a listed commodity, the situation conforms to the criteria specified by Cabinet Order as a situation in which it is appropriate for the component products of listed commodities to be traded on a single commodity market, in light of the status of transactions of the persons conducting purchase and sales, etc. of component products of listed commodities in the course of trade, and in light of other circumstances of economic activities related to the component products of listed commodities;
  - (iii) if the founders seek to open a commodity market with two or more commodity indices as a single listed commodity index, the majority of the goods or electric power underlying those two or more commodity indices are the same;
  - (iv) the provisions of the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules do not violate laws and regulations, and the method or management of trade, qualification of members, maximum number of members if it is specified, particulars of deposits, if the obligation to deposit a special deposit is specified, and other particulars prescribed in the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules are appropriate and sufficient for ensuring the fairness of transactions in the commodity market and for protecting consignors;
  - (v) the member commodity exchange which the application concerns is organized in a manner that conforms to the provisions of this Act.
- (2) If an application for the permission referred to in Article 9 falls under one of the following items, the competent minister must not give the permission referred to in that Article notwithstanding the provisions of the preceding paragraph:
- (i) there is a person falling under one of the following persons among the founders:
    - (a) a person specified by order of the competent ministry as one incapable of carrying out their duties properly due to mental or physical disorder;
    - (b) a person who has become subject to an order of commencement of

- bankruptcy proceedings and has not been released from bankruptcy restriction or a person who is treated in the same manner under the laws and regulations of a foreign country;
- (c) a person that has been sentenced to imprisonment without work or a heavier punishment (including an equivalent sentence under foreign laws and regulations) or to a fine (including an equivalent sentence under foreign laws and regulations) pursuant to this Act or pursuant to the provisions of a foreign law or regulation that is equivalent to this Act, and for whom five years have not passed since the day on which the person finished serving the sentence or ceased to be subject to the sentence;
  - (d) a person that has had the authorization referred to in Article 96-19, paragraph (1), Article 96-31, paragraph (1), Article 96-25, paragraph (1) or the proviso to paragraph (3) revoked pursuant to the provisions of Article 96-22, paragraph (1), Article 96-34, paragraph (1), or Article 96-40, paragraph (1); a person that has had the permission referred to in Article 9, the license referred to in Article 78, Article 167, Article 190, paragraph (1), Article 332, paragraph (1) or Article 342, paragraph (1) revoked pursuant to the provisions of Article 159, paragraph (1) or (2), Article 186, paragraph (1) or (2), Article 235, paragraph (3), Article 236, paragraph (1), or Article 340, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345); a person that has had the registration referred to in Article 240-2, paragraph (1) revoked pursuant to the provisions of Article 240-23, paragraph (1); and for whom five years have not passed since the day of the revocation, or a person that had obtained the same kind of permission, license, or registration in a foreign state pursuant to the provisions of a foreign law or regulation which is equivalent to this Act (including registration or any other administrative disposition similar to the permission, license, or registration; referred to as "permission, etc." in (f)) and that has had the permission, etc. revoked, and for whom five years have not passed since the day of the revocation;
  - (e) a person that has been expelled from a commodity exchange or an equivalent facility in a foreign state pursuant to the provisions of Article 160, paragraph (1) or the provisions of a foreign law or regulation that are equivalent to those provisions (including any other equivalent administrative disposition under foreign laws and regulations; the same applies in (g) and (h)) or whose trading qualification has been revoked, and for whom five years have not passed since the day of the expulsion or revocation;
  - (f) in the cases in which a person that had obtained the authorization referred to in Article 96-19, paragraph (1) or Article 96-31, paragraph (1) (hereinafter referred to as a "major shareholder" in this item) has had that

authorization revoked pursuant to the provisions of Article 96-22, paragraph (1) or Article 96-34, paragraph (1); a commodity exchange holding company that has had the authorization referred to in Article 96-25, paragraph (1) or the proviso of paragraph (3) of that Article revoked pursuant to the provisions of Article 96-40, paragraph (1); a commodity exchange that has had the permission referred to in Article 9 or the license referred to in Article 78 revoked pursuant to the provisions of Article 159, paragraph (1) or (2); a commodity clearing organization that has had the license referred to in Article 167 revoked pursuant to the provisions of Article 186, paragraph (1) or (2); a commodity derivatives business operator that has had the license referred to in Article 190, paragraph (1) revoked pursuant to the provisions of Article 235, paragraph (3) or Article 236, paragraph (1); a commodity derivatives intermediary service provider that has had the registration referred to in Article 240-2, paragraph (1) revoked pursuant to the provisions of Article 240-23, paragraph (1); or a corporation that is the establisher of a Type 1 Specified Facility (meaning the establisher of a Type 1 Specified Facility as prescribed in Article 331, item (ii); hereinafter the same applies in this item) or the establisher of a Type 2 Specified Facility (meaning the establisher of a Type 2 Specified Facility as prescribed in Article 331, item (iii); hereinafter the same applies in this item) has had the license referred to in Article 332, paragraph (1) or Article 342, paragraph (1) revoked pursuant to the provisions of Article 340, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345); a person who was an officer of the major shareholder, commodity exchange holding company, commodity exchange, commodity clearing organization, commodity derivatives business operator, commodity derivatives intermediary service provider, the establisher of a Type 1 Specified Facility or Type 2 Specified Facility within 30 days prior to the date of revocation and for whom five years have not passed since the day of the revocation; or in the case in which a corporation that had obtained similar permission, etc. in a foreign state has had that permission, etc. revoked pursuant to the provisions of a foreign law or regulation that is equivalent to this Act, a person who was an officer of the corporation and for whom five years have not passed since the day of the revocation;

- (g) in the case in which a member, etc. of a commodity exchange which is a corporation or a member, etc. of a facility equivalent to a commodity exchange in a foreign state has been expelled from the commodity exchange or the facility pursuant to an order under the provisions of Article 160, paragraph (1) or under the provisions of an equivalent foreign law or regulation, or has had their trading qualification revoked, a person

- who was an officer of the corporation within 30 days prior to the date of expulsion or revocation and for whom five years have not passed since the day of the expulsion or revocation;
- (h) an officer that has been dismissed pursuant to an order under the provisions of Article 96-40, paragraph (2), Article 159, paragraph (3), Article 160, paragraph (1), Article 186, paragraph (4), Article 236, paragraph (2), or Article 240-23, paragraph (2), or under the provisions of an equivalent foreign law or regulation and for whom five years have not passed since the day of the dismissal;
  - (i) a person for whom one year has not passed after becoming subject to a court order under the provisions of Article 328, paragraph (1) or a foreign court order under the provisions of an equivalent foreign law or regulation;
  - (j) a person set forth in Article 331, paragraph (1), item (iii) of the Companies Act;
  - (k) a minor that does not have the same capacity to act as an adult in business, and whose legal representative falls under any of sub-items (a) through (j), or sub-item (l);
  - (l) a corporation that has a person that falls under one of sub-items (a) through (k) as an officer;
  - (ii) if a written application or documents that are required to be attached to the written application contains a false statement about a material particular.
- (3) If an application is filed for the permission referred to in Article 9 and the term of existence of a member commodity exchange or the expiration date of the commodity market is stated or recorded in the articles of incorporation, the criteria set forth in paragraph (1), item (i) is to be replaced by the criteria that the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index which the application concerns, and that, in light of the status of transactions of the component products of listed commodities, etc., the establishment of a member commodity exchange in which the futures transactions are conducted does not and is not likely to cause significant hindrance to the production and distribution of the component products of listed commodities, etc., and for the application of the criteria and the criteria referred to in items (ii) and (iii) of that paragraph, the competent minister is to make a judgment on those criteria for the term of existence or the term until the expiration date.
- (4) The competent minister must not give the permission referred to in Article 9 until after three months have passed since the day the public notice under the provisions of Article 352 (limited to the part related to item (iii)) has been issued.
- (5) If the competent minister finds that an application for the permission



referred to in Article 9 does not conform to one of the items of paragraph (1) or to fall under one of the items of paragraph (2), the minister must notify the applicant of this in advance, request the applicant or their representative to appear, and have an official of the ministry conduct a hearing of opinions so as to give that person an opportunity to submit evidence for the purpose of clarification.

- (6) In the case referred to in the preceding paragraph, if the person whose opinion is to be heard fails to appear at the hearing of opinions without legitimate grounds, the competent minister is not required to conduct the hearing of opinions.
- (7) When notifying a person referred to in paragraph (5), the competent minister must give the notice by stating the particulars of the hearing of opinions, and the location and date for the hearing of opinions.
- (8) The hearing of opinions referred to in paragraph (5) must be opened to the public; provided, however, that this does not apply if the competent minister finds it necessary to maintain confidential information related to the business of the person whose opinion is to be heard secret, or finds it necessary in the public interest.
- (9) If the competent minister finds it necessary in order to conduct the hearing of opinions referred to in paragraph (5), the minister may request a witness to appear and hear their opinion, request a witness to submit an opinion or report, or ask an expert to appear and have them give an expert opinion.
- (10) If an application is filed for the permission referred to in Article 9 and the term of existence of a member commodity exchange or the expiration date of the commodity market is stated or recorded in the articles of incorporation, the competent minister must issue a notice of whether the permission was granted or not to the applicant within four months from the day the public notice under the provisions of Article 352 (limited to the part related to item (iii)) was given.
- (11) If the competent minister does not issue the notice referred to in the preceding paragraph within the period set forth in that paragraph, the permission referred to in Article 9 is deemed to have been given on the final day of that period.

#### (Time of Establishment and Its Notification)

Article 16 (1) A member commodity exchange is established when its establishment is registered.

- (2) A member commodity exchange must notify the competent minister of its establishment within two weeks from the day of its establishment.

#### (Transfer of Affairs to the President)

Article 17 If permission referred to in Article 9 is granted (including the case

pursuant to the provisions of Article 15, paragraph (11)), the founders must hand over the affairs of the member commodity exchange to the president without delay.

(Application, Mutatis Mutandis of the Companies Act)

- Article 18 (1) The provisions of Articles 53 through 56 of the Companies Act apply mutatis mutandis to the founders of a member commodity exchange.
- (2) The provisions of Part VII, Chapter II, Section 2 (excluding Article 847, paragraph (2), Article 847-2, Article 847-3, Article 849, paragraph (2), paragraph (3), items (ii) and (iii), and paragraphs (6) through (11), Article 851, and Article 853, paragraph (1), items (ii) and (iii)) of the Companies Act apply mutatis mutandis to an action to enforce the liability of the founders of a member commodity exchange. In such a case, the term "order of the ministry of justice" in Article 847, paragraphs (1) and (4) of that Act is deemed to be replaced with "order of the competent ministry", and any other necessary technical replacement of terms is specified by Cabinet Order.
- (3) The provisions of Article 828, paragraph (1) (limited to the part related to item (i)) and paragraph (2) (limited to the part related to item (i)), Article 834 (limited to the part related to item (i)), Article 835, paragraph (1), Article 836, paragraphs (1) and (3), Articles 837 through 839, and Article 846 of the Companies Act apply mutatis mutandis to an action to invalidate the establishment of a member commodity exchange.

(Changing the Name of an Officer or Member)

- Article 19 (1) If a particular set forth in Article 14, paragraph (1), item (iv) or (v) changes, the member commodity exchange must submit a written notification of change stating the fact to the competent minister without delay.
- (2) The written notification of change referred to in the preceding paragraph must be accompanied by a document evidencing the change and the document specified by order of the competent ministry.

(Registration of Establishment)

- Article 20 (1) A registration of establishment of a member commodity exchange must be made at the locality of its principal office within two weeks from the day on which the permission referred to in Article 9 is given.
- (2) The following information must be registered for the registration referred to in the preceding paragraph:
- (i) the purpose;
  - (ii) the name;
  - (iii) the location of the office;
  - (iv) the term of existence or grounds for dissolution, if specified;

- (v) the total amount of contribution;
- (vi) the amount for one unit of contribution and the method of its payment;
- (vii) the name, address, and qualification of the person with the representative authority;
- (viii) the means of public notice;
- (ix) if the provisions of the articles of incorporation referred to in Article 11, paragraph (6) specify electronic public notice as the means of public notice, the following matters:
  - (a) the matters that are necessary for making the information required to be given by electronic public notice available to many and unspecified persons, and that are specified by Order of the Ministry of Justice;
  - (b) if there are provisions in the articles of incorporation pursuant to the provisions of the second sentence of Article 11, paragraph (7), those provisions.

(Registration of a Change)

Article 21 (1) When a change occurs to a matter set forth in one of the items of paragraph (2) of the preceding Article regarding a member commodity exchange, a registration of the change must be made at the locality of its principal office within two weeks from the day the change occurred.

(2) Notwithstanding the provisions of the preceding paragraph, it is sufficient to register a change to the matter set forth in paragraph (2), item (v) of the preceding Article within four weeks from the last day of each business year.

(Registration of the Relocation of the Principal Office to the Jurisdictional District of Another Registry Office)

Article 22 If a member commodity exchange relocates its principal office to the jurisdictional district of another registry office, it must register the relocation at the former locality, and register the information set forth in the items of Article 20, paragraph (2) at the new location, within two weeks from the day of relocation.

(Registration of a Provisional Disposition to Suspend Execution of Duties)

Article 23 If an order for a provisional disposition to suspend the person representing a member commodity exchange from executing their duties or to appoint a person who is to perform the person's duties, or an order to change or revoke such a provisional disposition, a registration to that effect must be made at the locality of the principal office of the member commodity exchange.

(Registration at the Locality of Secondary Offices)

Article 24 (1) In the case set forth in one of the following items (excluding the

case in which the secondary office set forth in each item is located within the jurisdictional district of the registry office that has jurisdiction over the locality of the principal office), a registration at the locality of a secondary office must be made at the locality of the secondary office within the period specified in each item:

- (i) if the secondary office is established upon the establishment of the member commodity exchange (excluding the case set forth in the following item): within two weeks from the day on which the registration of establishment is made at the locality of the principal office;
  - (ii) if the member commodity exchange that is established in a consolidation-type merger establishes the secondary office at the time of the consolidation-type merger: within three weeks from the day set forth in Article 147-2, paragraph (1); or
  - (iii) if the secondary office is established after the establishment of the member commodity exchange: within three weeks from the day on which the secondary office is established.
- (2) The following information must be registered for a registration at the locality of a secondary office; provided, however, that if a secondary office is newly established within the jurisdictional district of a registry office that has jurisdiction over the locality of an existing secondary office, it is sufficient to register the information set forth in item (iii):
- (i) the name;
  - (ii) the location of the principal office;
  - (iii) the locations of the secondary offices (limited to secondary offices located within the jurisdictional district of the registry office that has jurisdiction over the secondary office in question).
- (3) When a change occurs to information set forth in one of the items of the preceding paragraph, a registration of the change must be made at the locality of the secondary office within three weeks from the day the change occurred.

(Registration of the Relocation of a Secondary Office to the Jurisdictional District of Another Registry Office)

Article 24-2 If a member commodity exchange relocates its secondary office to the jurisdictional district of another registry office, it must register the relocation at the former locality (excluding the case in which the office is located within the jurisdictional district of the registry office that has jurisdiction over the locality of the principal office) within three weeks, and register the particulars set forth in the items of paragraph (2) of the preceding Article at the new locality (excluding the case in which the office is located within the jurisdictional district of the registry office that has jurisdiction over the locality of the principal office; hereinafter the same applies in this Article)

within four weeks; provided, however, that if a member commodity exchange newly relocates a secondary office to the jurisdictional district of a registry office that has jurisdiction over the locality of an existing secondary office, it is sufficient for the particulars set forth in item (iii) of that paragraph to be registered at the new locality.

(Competent Registry Offices and Registers)

Article 25 (1) The legal affairs bureau or the district legal affairs bureau, or the branch office or sub-branch office of that bureau that has jurisdiction over the locality of the office of the member commodity exchange, is in charge of the affairs concerning registration of a member commodity exchange as the competent registry office.

(2) A registry office keeps a register of member commodity exchanges.

(Application for Registration of Establishment)

Article 26 (1) A registration of establishment of a member commodity exchange is made by the filing of an application by the person that is to represent the member commodity exchange.

(2) The written application for a registration of the establishment of a member commodity exchange must be accompanied by the articles of incorporation, and documents proving that payment of the contribution have been made and proving the qualifications of the person that is to represent the member commodity exchange.

(Application for the Registration of a Change)

Article 27 A written application for the registration of a change to a particular set forth in one of the items of Article 20, paragraph (2) must be accompanied by a document proving the change to the particular.

(Procedure for Registering the Invalidity of Establishment)

Article 28 The provisions of Article 937, paragraph (1) of the Companies Act (limited to the part related to item (i), (a)) apply mutatis mutandis when a judgment upholding a claim related to an action seeking to invalidate the establishment of a member commodity exchange becomes final and binding. In such a case, the phrase "the locality of the head office of the company (or, in the case prescribed in item (i) (g), if the matters set forth in the items of Article 930, paragraph (2) have been registered as a result of the resolution, the head office and the branch offices which the registration concerns)" in that paragraph is deemed to be replaced with "the locality of the principal office of the member commodity exchange".

(Application, Mutatis Mutandis of the Commercial Registration Act)

Article 29 The provisions of Articles 2 through 5, Articles 7 through 15 , Articles 17 through 23-2, Article 24 (excluding items (xv) and (xvi)), Articles 25 through 27, Articles 48 through 53, and Articles 132 through 148 of the Commercial Registration Act (Act No. 125 of 1963) apply mutatis mutandis to the registration of a member commodity exchange. In such case, the phrase "the items of Article 930, paragraph (2) of the Companies Act" in Article 48, paragraph (2) of that Act is deemed to be replaced with "the items of Article 24, paragraph (2) of the Commodity Derivatives Transaction Act".

### **Subsection 2 Members**

Article 30 Deleted

(Disqualifying Conditions)

Article 31 (1) A person who falls under any of the following items may not become a member:

- (i) a person specified by order of the competent ministry as a person who is incapable of carrying out their duties properly due to mental or physical disorder;
- (ii) a person that falls under any of the persons referred to in Article 15, paragraph (2), item (i), sub-items (b) through (j);
- (iii) a minor that does not have the same capacity to act as an adult in business and whose legal representative falls under any of the persons referred to in the preceding two items or the following item; or
- (iv) a corporation whose officers include a person who falls under one of the persons referred to in the preceding three items.

(2) With regard to the application of the provisions of item (ii) of the preceding paragraph (limited to the part related to Article 15, paragraph (2), item (i), sub-items (c) through (e), and sub-item (i)) and item (iv) of the preceding paragraph, the corporation that survives a merger or the corporation established in a merger is deemed to be the same corporation as the corporation that disappeared in the merger.

(Contributions)

Article 32 (1) A member must make a contribution of one or more units.

(2) Contributions may not be made using property other than money.

(3) The amount for one unit of contribution must be uniform.

(4) In addition to a member bearing the expenses under the provisions of Article 34 and bearing the amount of loss under the provisions of Article 45, paragraph (3), a member's liability for the obligations of a member financial

instruments corporation is limited to the amount of their contribution.

- (5) A member may not assert against a member commodity exchange by offsetting the payment of contribution.

(Voting Rights and the Right to Elect)

Article 33 (1) A member has a single voting right and a single right to elect officers, regardless of the number of units of contribution.

- (2) A member may exercise a voting right or right to elect by a written ballot or through a proxy regarding the particulars that have been notified in advance pursuant to the provisions of Article 59, paragraph (8). In such a case, a person may not act as a proxy unless that person has the qualifications specified in the articles of incorporation.

- (3) In lieu of exercising a voting right by written ballot pursuant to the preceding paragraph, a member may exercise a voting right by electronic or magnetic means, pursuant to the provisions of the articles of incorporation.

- (4) A person that exercises a voting right or a right to vote pursuant to the provisions of the preceding two paragraphs is deemed to be present at the relevant meeting.

- (5) A proxy must submit a document certifying the representative authority to the member commodity exchange. In such a case, if the articles of incorporation provide that voting rights may be exercised by electronic or magnetic means, the proxy may prove the representative authority through electronic or magnetic means in lieu of submitting the document.

(Imposing Expenses)

Article 34 (1) A member commodity exchange may impose expenses on its members pursuant to the provisions of the articles of incorporation.

- (2) The provisions of Article 32, paragraph (5) apply mutatis mutandis to the payment of the expenses referred to in the preceding paragraph.

(Membership)

Article 35 (1) A person that, at the time of establishment of a member commodity exchange, seeks to join the member commodity exchange and has finished paying the full amount of the contribution the person has undertaken, becomes a member of the member commodity exchange at the time of its incorporation.

- (2) A person that, at the time of establishment of a member commodity exchange, seeks to join the member commodity exchange but has not finished making the payment prescribed in the preceding paragraph by the time of the incorporation of the member commodity exchange, is deemed to have canceled the application for membership at the time of the incorporation of the member

commodity exchange.

- (3) A person seeking to join a member commodity exchange after its incorporation becomes a member at the time that, pursuant to the provisions of the articles of incorporation, the person obtains the member commodity exchange's consent to join, finishes paying the full amount of the contribution that the person has undertaken, and finishes paying the membership fee, if the member commodity exchange has specified that it will require the payment of the full amount of contribution and collection of the membership fee; or at the time that, the person acquires the whole or a part of a member's equity interest, and finishes paying the membership fee, if the member commodity exchange has specified that it will require the acquisition of the whole or a part of a member's equity interest and collection of the membership fee.
- (4) If a person that is qualified to become a member seeks to join a member commodity exchange, the member commodity exchange must not refuse the membership without legitimate grounds.

(Transfer of Equity Interest)

Article 36 (1) A member may transfer the whole or a part of their equity interest to a member or a person that is qualified to become a member, pursuant to the provisions of the articles of incorporation.

- (2) If a person that is qualified to become a member seeks to acquire equity interest, the acquisition must be governed by the same rules as those for joining the member commodity exchange.
- (3) A person that acquires equity interest succeeds to the rights and obligations of the person transferring those shares.

(Succession to Shares)

Article 37 (1) If a member dies and that member's heir or legatee (hereinafter referred to as the "heir, etc." in this Article) is a member, the person succeeds to the equity interest of the decedent and the rights and obligations of the decedent concerning the equity interest. In such a case, the heir, etc. must notify the member commodity exchange of that fact without delay.

- (2) If a member dies and the heir, etc. is a person that is qualified to become a member, the person may succeed to the equity interest of the decedent and the rights and obligations of the decedent concerning the equity interest upon obtaining the member commodity exchange's consent for joining the member commodity exchange within the period specified in the articles of incorporation.
- (3) Once an heir, etc. succeeds to the equity interest of the decedent and to the rights and obligations of the decedent concerning the equity interest pursuant to the provisions of the preceding paragraph, the heir, etc. is deemed to have become a member at the decedent's time of death.



(4) In the case referred to in paragraph (1) or (2), if there are two or more heirs, etc., the provisions of these paragraphs apply only to one heir, etc. that has been selected with the consent of all the heirs, etc.

(Prohibition on Joint Ownership of Equity Interest)

Article 38 No member may jointly own equity interest.

(Succession to Rights and Obligations Connected with Transactions)

Article 39 A person that has succeeded to the equity interest of a member and to the rights and obligations connected with the equity interest pursuant to the provisions of Article 37, paragraph (1) or (2) succeeds to the rights and obligations connected with the transactions that the member has conducted in the commodity market.

(Succession to Member Status)

Article 40 If a member merges, the corporation surviving the merger or the corporation established in the merger succeeds to the member status.

(Voluntary Withdrawals)

Article 41 (1) A member may withdraw from a member commodity exchange with 30 days' advance notice.

(2) The period of advance notice referred to in the preceding paragraph may be extended by the articles of incorporation; provided, however, that the period may not exceed one year.

(Involuntary Withdrawal)

Article 42 Beyond what is provided for in the preceding Article and Article 44, paragraph (1), a member is to withdraw from the member commodity exchange for the following reasons:

- (i) all of the commodity markets in which the person trades have been closed pursuant to the provisions of Article 70;
- (ii) transfer of the whole of the member's shares;
- (iii) member's death or dissolution; and
- (iv) member's expulsion.

(Expulsion)

Article 43 (1) With the exception of expulsion pursuant to the provisions of Article 99, paragraph (5) and expulsion by order of the competent minister pursuant to the provisions of Article 160, paragraph (1), a member is to be expelled through a resolution of the general meeting of members as provided in Article 61, in respect of a member for whom a reason as specified by the

articles of incorporation exists.

- (2) In the case referred to in the preceding paragraph, a member commodity exchange must send a document stating the fact and the reason for the expulsion to the member by 10 days prior to the day of the general meeting of members, and must give the member an opportunity to provide an explanation at the general meeting of members.
- (3) Expulsion may not be asserted against a member unless the expelled member is notified of the expulsion.

(Withdrawal due to Attachment of Equity Interests)

Article 44 (1) A creditor that has attached the equity interest of a member may have the member withdraw from a member commodity exchange; provided, however, that the creditor must give 30 days' advance notice to the member commodity exchange and the member.

- (2) The advance notice referred to in the proviso to the preceding paragraph ceases to be effective if the member referred to in that paragraph makes payment or provides suitable collateral to the creditor referred to in in that paragraph.
- (3) Attachment of the equity interest of a member is also effective against the right to claim a refund of the equity interest.

(Refunding Equity Interests)

Article 45 (1) A member that has withdrawn from the member commodity exchange may receive a refund of the whole or a part of its equity interest pursuant to the provisions of the articles of incorporation.

- (2) The equity interest referred to in the preceding paragraph is decided based on the property of the member commodity exchange as of the last day of the month preceding the month that includes the day on which the member has withdrawn from the member commodity exchange.
- (3) In calculating the equity interest referred to in the preceding paragraph, if a debt cannot be repaid in full out of the property of the member commodity exchange, the member commodity exchange may file a claim against the member who has withdrawn for payment of the amount of loss that they are liable to bear.
- (4) A claim under paragraph (1) or the preceding paragraph expires by prescription if not exercised within two years after the withdrawal.
- (5) A member commodity exchange may suspend the refund of the equity interest until the member that has withdrawn pays its debt in full to the member commodity exchange.

### **Subsection 3 Organs**

(Officers)

Article 46 (1) A member commodity exchange has the following officers:

One president;

Two or more directors;

Two or more auditors.

(Authority of the President and Directors)

Article 47 (1) The president represents the member commodity exchange and presides over its affairs.

(2) Directors, pursuant to the provisions of the articles of incorporation, represents the member commodity exchange, assists the president in administering the affairs of the member commodity exchange, acts as a proxy in handling the duties of the president if the president is unavailable, and performs the duties of the president if the position is vacant.

(3) The execution of the affairs of a member commodity exchange is decided by a majority vote of the president and directors, unless otherwise specified by the articles of incorporation.

(Delegation of the Authority of the President and Directors)

Article 47-2 The president and directors may delegate their authority for specific actions to another person, unless the delegation is prohibited by the articles of incorporation or a resolution of the general meeting of members.

(Authority of Auditors)

Article 48 (1) An auditor audits the affairs of the member commodity exchange.

(2) An auditor may request the president or a director to give a report on the affairs or examine the state of the affairs and the property of the member commodity exchange at any time.

(3) An auditor must examine the documents that the president seeks to submit to a general meeting of members, and report their opinions to the general meeting of members.

(Disqualifying Conditions for Officers)

Article 49 (1) A person falling under a person referred to in one of Article 15, paragraph (2), item (i), sub-items (a) through (k) may not become the officer of a member commodity exchange.

(2) If an officer of a member commodity exchange comes to fall under a person provided for in the preceding paragraph, the officer loses their position.

(Appointment of Officers)

Article 50 (1) The members elect the officers of a member commodity exchange at a general meeting of members pursuant to the provisions of the articles of incorporation, with the exception of the directors that are appointed pursuant to the provisions of the following paragraph; provided, however, that the persons seeking to become members elect the officers at the time of establishment at the organizational general meeting.

(2) If there are special provisions in the articles of incorporation, the president appoints the number of directors specified by the articles of incorporation with the consent of the majority of the directors.

(Relationship between a Member Commodity Exchange and Officers)

Article 50-2 The relationship between a member commodity exchange and its officers is governed by the provisions concerning delegation.

(Term of Office of Officers)

Article 51 (1) The term of office of an officer is a period of not more than three years, as specified by the articles of incorporation.

(2) Notwithstanding the provisions of the preceding paragraph, the term of office of an officer at the time of establishment is the period decided at the organizational meeting; provided, however, that the period may not exceed one year.

(Provisional Directors and Provisional Auditors)

Article 52 If there is no person to perform the duties of a director or auditor and the competent minister finds it to be necessary, the minister may appoint a provisional director or provisional auditor.

(Responsibilities of the President and Directors)

Article 53 (1) If the president or a director neglects their duties, the president and directors are held jointly and severally liable for damages to the member commodity exchange.

(2) If the president or a director performs an act that violates a law or regulation or the articles of incorporation, even if this was based on a resolution of the general meeting of members, the president and directors are held jointly and severally liable for damages to third parties.

(Request for the Dismissal of an Officer)

Article 54 (1) A member may request the dismissal of an officer, with the joint signature of at least one-fifth of all the members. In such a case, with regard to the request, the officer which the request concerns loses their position, if there is consent of at least two-thirds of the members present at a general meeting of

members with the presence of at least half of all members.

- (2) A request for dismissal under the preceding paragraph must be made simultaneously for the president and all of the directors or simultaneously for all of the auditors; provided, however, that this does not apply if the dismissal is requested due to the violation of a law or regulation, the articles of incorporation, or the operational rules.
- (3) To make request for dismissal under the provisions of paragraph (1), a document stating the reason for the request must be submitted to the president.
- (4) If a request for dismissal under the provisions of paragraph (1) is made, the president must submit the request for discussion to a general meeting of members and send the document under the provisions of the preceding paragraph to the officer which the request concerns by 10 days before the day of the general meeting of members, and must give that officer an opportunity to provide an explanation at the general meeting of members.
- (5) The provisions of Article 59, paragraphs (3), (6), and (7) apply mutatis mutandis to the case referred to in the preceding paragraph.

(Prohibition on the Concurrent Holding of Positions by Officers)

- Article 55 (1) The officer of a member commodity exchange must not hold the position of officer at another commodity exchange.
- (2) It is prohibited for the president or a director to concurrently hold the position of auditor at the member commodity exchange where the person is serving as president or director, and for an auditor to concurrently hold the position of employee, president, or director at the member commodity exchange where the person is serving as auditor.

(Prohibition of Self-Contract of Directors)

- Article 56 When a member commodity exchange concludes a contract with the president or a director, an auditor represents the member commodity exchange. The same applies to litigation between a member commodity exchange and the president or a director.

(Keeping and Inspection of Articles of Incorporation)

- Article 57 (1) A member commodity exchange must keep copies of the articles of incorporation and operational rules at each office of the member commodity exchange, and must keep a register of members at its principal office.
- (2) A member commodity exchange must keep the minutes of general meetings of members at its principal office for 10 years, and must keep copies of those minutes at its secondary offices for five years.
  - (3) The following information concerning each member must be stated or recorded in the register of members:

- (i) the name or trade name and the address;
  - (ii) the date of membership;
  - (iii) the number of units of contribution, the amount of contribution, and the date of payment;
  - (iv) the listed commodity or listed commodity index of the commodity market on which the member conducts transactions; and
  - (v) if it is a commodity derivatives business operator, the license date.
- (4) A member or creditor of a member commodity exchange may make the following requests at any time during the business hours of the member commodity exchange; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange:
- (i) a request to inspect a document referred to in paragraph (1) or (2);
  - (ii) a request to be issued a certified copy or extract of a document referred to in paragraph (1) or (2);
  - (iii) if an electronic or magnetic record has been prepared in lieu of a document referred to in paragraph (1) or (2), a request to inspect a thing that displays the information that has been recorded in that electronic or magnetic record by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding item by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (5) If a member commodity exchange has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

(Application, Mutatis Mutandis of the Companies Act)

Article 58 The provisions of Article 424 and Article 430 of the Companies Act apply mutatis mutandis to the president, directors, and auditors; the provisions of Part VII, Chapter II, Section 2 (excluding Article 847, paragraph (2), Article 847-2, Article 847-3, Article 849, paragraph (2), paragraph (3), items (ii) and (iii), and paragraphs (6) through (11), Article 851, and Article 853, paragraph (1), items (ii) and (iii)) of that Act apply mutatis mutandis to an action pursuing the liability of the president, directors, and auditors; the provisions of Article 349, paragraphs (4) and (5), Article 350, Article 354, and Article 361, paragraphs (1) and (4) of that Act apply mutatis mutandis to the president and directors; and the provisions of Article 53 apply mutatis mutandis to the auditors. In such a case, the term "paragraph (1) of the preceding Article" in Article 424 of that Act is deemed to be replaced with "Article 53, paragraph (1) of the Commodity Derivatives Transaction Act", the

term "In cases where officers, etc." in Article 430 of that Act is deemed to be replaced with "If the president or a director", the term "another officer, etc." in that Article is deemed to be replaced with "an auditor", the term "Order of the Ministry of Justice" in Article 847, paragraphs (1) and (4) of that Act is deemed to be replaced with "order of the competent ministry", and any other technical replacement of terms is as specified by Cabinet Order.

(Convocation of General Meetings of Members)

- Article 59 (1) The president must convene an ordinary general meeting of members once every business year pursuant to the provisions of the articles of incorporation.
- (2) The president may convene an extraordinary general meeting of members pursuant to the provisions of the articles of incorporation, whenever the president finds this to be necessary.
- (3) If a member submits a document stating the purpose of a meeting and the grounds for convening a meeting to the president and requests the convocation of a general meeting of members with the consent of at least one-fifth of all the members, the president must convene an extraordinary general meeting of members within 20 days from the day of the request.
- (4) In the case referred to in the preceding paragraph, if the articles of incorporation provide that a voting right is to be exercised by electronic or magnetic means, in lieu of submitting the document under the provisions of that paragraph, a member may submit the purpose and grounds that are required to be stated in that document by electronic or magnetic means. In such a case, a member that has submitted the purpose and grounds that are required to be stated in the document by electronic or magnetic means is deemed to have submitted that document.
- (5) In providing the purpose and grounds that are required to be stated in a document by the electronic or magnetic means (excluding any means specified by order of the competent ministry) referred to in the first sentence of the preceding paragraph, the purpose and grounds are deemed to have reached the president at the time that they are recorded in a file on a computer used by the president.
- (6) If there is no person to perform the duties of the president, or if a request set forth in paragraph (3) is made but the president fails to implement convocation procedures without legitimate grounds for failing to do so, an auditor must convene a general meeting of members without delay.
- (7) In the case referred to in the preceding paragraph, if there is no person to perform the duties of auditor, or if an auditor does not go through the procedures referred to in that paragraph without legitimate grounds, the member referred to in paragraph (3) may convene a general meeting of

members with the approval of the competent minister.

- (8) In order to convene a general meeting of members, a notice of convocation must be sent in writing to each member by 10 days prior to the day of the meeting; provided, however, that this period may be shortened by the articles of incorporation with regard to a convocation of a meeting prescribed in paragraph (2), (3), (6), or the preceding paragraph.
- (9) The purpose of the meeting must be stated or recorded in the notice referred to in the preceding paragraph.
- (10) In lieu of sending a written notice under the provisions of paragraph (8), a person that convenes a general meeting of members may send the notice by electronic or magnetic means, with the consent of the members and pursuant to the provisions of Cabinet Order. In such a case, the person that has sent the notice by electronic or magnetic means to convene a general meeting of members is deemed to have sent the written notice under the provisions of that paragraph.

(Matters to be Resolved at General Meeting of Members)

Article 60 In addition to what is specifically provided for in this Act, the following matters require a resolution of a general meeting of members:

- (i) changes to the articles of incorporation;
- (ii) approval of the balance sheet, profit and loss statement, business report, and proposed appropriation of surplus, or proposed disposal of losses;
- (iii) the method of imposing and collecting expenses;
- (iv) dissolution;
- (v) merger;
- (vi) expulsion of a member; and
- (vii) any other matter specified by the articles of incorporation.

(Matters that Require a Special Resolution of a General Meeting of Members)

Article 61 The matters set forth in item (i) and items (iv) through (vi) of the preceding Article require a resolution to be passed with at least a two-thirds majority vote of the members present, at a meeting in which at least half of all members are present.

(Proceedings of General Meeting of Members)

Article 62 (1) Unless specifically provided for in this Act or in the articles of incorporation, proceedings of general meeting of members are decided by the majority vote of the members present, and the chairperson makes the decision in the event of a tie.

- (2) The chairperson is appointed at a general meeting of members.
- (3) The chairperson is not entitled to take part in a resolution of a general



meeting of members as a member.

- (4) Only the matters for which notice is given in advance pursuant to the provisions of Article 59, paragraph (8) may be resolved at a general meeting of members; provided, however, that this does not apply if otherwise provided for in the articles of incorporation.
- (5) The minutes of a general meeting of members must also be signed by the auditors present.

(Resolution for Postponement or Continuation)

Article 62-2 If a resolution has been made to postpone or continue the meeting at a general meeting of members, the provisions of the main clause of Article 59, paragraph (8) do not apply.

(Minutes)

Article 62-3 The minutes of a general meeting of members must be prepared pursuant to the provisions of order of the competent ministry.

(Application, Mutatis Mutandis of the Companies Act)

Article 63 The provisions of Article 830, Article 831, Article 834 (limited to the part related to items (xvi) and (xvii)), Article 835, paragraph (1), Article 836, paragraphs (1) and (3), Article 837, Article 838, Article 846, and Article 937, paragraph (1) (limited to the part that involves item (i) (g)) of the Companies Act apply mutatis mutandis to an action for a declaratory judgment as to the absence or invalidity of a resolution of a general meeting of members or an action seeking the rescission of the resolution. In such a case, the phrase "the head office (or, in the case prescribed in item (i), (g), if the matters set forth in the items of Article 930, paragraph (2) have been registered as a result of the resolution, the head office and the branch offices which the registration concerns)" in Article 937, paragraph (1) is deemed to be replaced with "the principal office of the member commodity exchange (or, in the case prescribed in item (i), (g), if a particular set forth in the items of Article 24, paragraph (2) of the Commodity Derivatives Transaction Act is registered as a result of the resolution, the principal office and the secondary office which the registration concerns)".

#### **Subsection 4 Accounts**

(Loss Reserves)

Article 64 (1) A member commodity exchange must set aside at least ten percent of surplus for each business year as loss reserves pursuant to the provisions of the articles of incorporation.

(2) The reserves referred to in the preceding paragraph may not be reduced, except in the case of allocating them to loss compensation.

(Prohibition of Distribution of Surplus)

Article 65 A member commodity exchange may not distribute its surplus.

(Preparation of Account Settlement Documents)

Article 66 (1) A member commodity exchange must prepare an inventory of property, balance sheet, profit and loss statement, business report, and proposed appropriation of surplus or proposed disposal of losses (hereinafter referred to as "account settlement documents, etc.") pursuant to the provisions of order of the competent ministry.

(2) Account settlement documents, etc. may be prepared as electronic or magnetic records.

(Submission of Account Settlement Documents)

Article 67 The president must submit or provide account settlement documents, etc. (including electronic or magnetic records, if these documents have been prepared as electronic or magnetic records or if electronic or magnetic records are prepared in lieu of documents) to the auditors by two weeks before the day of an ordinary general meeting of members.

(Approval and Reporting of Account Settlement Documents)

Article 68 (1) Account settlement documents, etc. (excluding the inventory of property and business report) must be approved by an ordinary general meeting of members.

(2) The president must report the content of the business report at an ordinary general meeting of members.

(Keeping and Inspection of Account Settlement Documents)

Article 68-2 (1) A member commodity exchange must keep the account settlement documents, etc. at its principal office for five years, beginning from the day two weeks prior to the day of the relevant ordinary general meeting of members.

(2) A member commodity exchange must keep a copy of account settlement documents, etc. at its secondary offices for three years, beginning from the day two weeks prior to the day of the relevant ordinary general meeting of members; provided, however, that this does not apply if the account settlement documents, etc. have been prepared as electronic or magnetic records and a measure specified by order of the competent ministry as a measure that enables a secondary office to respond to the requests set forth in items (iii) and

(iv) of the following paragraph has been taken.

(3) The member or creditor of a member commodity exchange may make the following requests to the member commodity exchange at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange:

(i) if account settlement documents, etc. have been prepared as documents, a request to inspect the documents or their copies;

(ii) a request to be issued a certified copy or extract of the documents referred to in the preceding item;

(iii) if account settlement documents, etc. have been prepared as electronic or magnetic records, a request to inspect a thing that displays the information that have been recorded in that electronic or magnetic record by the means specified by order of the competent ministry;

(iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding item by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.

(Public Notice of the Balance Sheet)

Article 68-3 A member commodity exchange must issue public notice of its balance sheet pursuant to the provisions of order of the competent ministry without delay, after the conclusion of an ordinary general meeting of members.

### **Subsection 5 Dissolution and Liquidation**

(Dissolution of a Member Commodity Exchange)

Article 69 A member commodity exchange is to dissolve due to the following grounds:

(i) the expiration of the term of existence or the occurrence of grounds for dissolution specified in the articles of incorporation;

(ii) a resolution of a general meeting of members;

(iii) a merger (limited to a merger in which the member commodity exchange disappears; the same applies in Articles 71 and 72);

(iv) an order of commencement of bankruptcy proceedings;

(v) a revocation of permission for establishment;

(vi) the number of members becomes 10 or less for all of its commodity markets.

(Closure of Some Commodity Markets)

Article 70 If the number of members conducting transactions in a commodity market that a member commodity exchange operates becomes 10 or less, the

member commodity exchange must suspend the transactions in that commodity market and file an application for authorization for a change to the articles of incorporation pursuant to the provisions of Article 155, paragraph (1), unless the commodity market is to be dissolved for the reason set forth in item (vi) of the preceding Article.

(Liquidators)

Article 71 If a member commodity exchange is dissolved, the president and directors become the liquidators, unless it is dissolved in a merger or due to an order of commencement of bankruptcy proceedings; provided, however, that this does not apply if another person is appointed at a general meeting of members.

(Distribution of Residual Assets)

Article 71-2 Residual assets must be distributed based on a member's number of units of contribution.

(Registration of Dissolution)

Article 72 If a member commodity exchange is dissolved, the dissolution must be registered at the locality of its principal office within two weeks from the dissolution, unless it is dissolved in a merger or due to an order of commencement of bankruptcy proceedings.

(Registration of Completion of Liquidation)

Article 73 Once a liquidation is complete, the completion of liquidation must be registered at the locality of the principal office within two weeks, and at the locality of the secondary offices within three weeks, from the day of the approval referred to in Article 507, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1).

(Application for Registration of Dissolution)

Article 74 (1) A document certifying the reason for dissolution must be attached to the written application to register the dissolution of a member commodity exchange, and if the president or director that represents the member commodity exchange is not the liquidator, a document certifying that the liquidator is the person that is to represent the member commodity exchange must be attached to the written application.

(2) If a member commodity exchange is dissolved by the competent minister's disposition to revoke the permission for establishment, the registration of its dissolution is made at the request of the competent minister.

(Application for the Registration of the Completion of Liquidation)

Article 75 A document evidencing that the approval referred to in Article 507, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1) has been obtained must be attached to the written application for a registration under the provisions of Article 73.

(Approval of the Merger of a Member Commodity Exchange)

Article 76 (1) A merger in which member commodity exchanges constitute all or part of the parties (excluding a merger referred to in Article 145, paragraph (1)) does not become effective without the authorization of the competent minister.

(2) If a member commodity exchange is dissolved for one of the following reasons, the person that was its representative must notify the competent minister of the fact without delay:

- (i) the expiration of the term of existence or the occurrence of grounds for dissolution specified in the articles of incorporation;
- (ii) a resolution of a general meeting of members;
- (iii) an order of commencement of bankruptcy proceedings;
- (iv) the number of members becomes 10 or less for all of its commodity markets.

(Application, Mutatis Mutandis of the Companies Act)

Article 77 (1) The provisions of Article 475 (excluding items (i) and (iii)), Article 476, Article 478, paragraphs (2) and (4), Article 479, paragraphs (1) and (4), Article 481, Article 482, paragraph (2), Article 483, paragraphs (4) through (6), Article 484, Article 485, Article 492, paragraphs (1) through (3), Articles 499 through 503, Article 507, Article 868, paragraph (1), Article 869, Article 870, paragraph (1) (limited to the part related to item (i)), Article 871, Article 872 (limited to the part related to item (iv)), Article 874 (limited to the part related to items (i) and (iv)), Article 875, and Article 876 of the Companies Act apply mutatis mutandis to the liquidation of a member commodity exchange. In such a case, the term "Order of the Ministry of Justice" in Article 492, paragraph (1) and Article 507, paragraph (1) of that Act is deemed to be replaced with "order of the competent ministry", and the phrase "give public notice in an Official Gazette" in Article 499, paragraph (1) of that Act is deemed to be replaced with "issue public notice".

(2) The provisions of Article 48, paragraphs (2) and (3), Article 50-2, Article 53, Articles 55 through 57, Article 59, Article 62-3, and Articles 66 through 68-3 of this Act and the provisions of Article 361, paragraphs (1) and (4), Article 424, Article 430, Article 599, and Article 600 of the Companies Act apply mutatis mutandis to the liquidators of a member commodity exchange, and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847, paragraph

- (2), Article 847-2, Article 847-3, Article 849, paragraph (2), paragraph (3), items (ii) and (iii), and paragraphs (6) to (11) inclusive, Article 851, and Article 853, paragraph (1), items (ii) and (iii)) of that Act apply mutatis mutandis to an action pursuing the liability of the liquidators of a member commodity exchange. In such a case, the phrase "inventory of property, balance sheet, profit and loss statement, business report, and proposed appropriation of surplus or proposed disposal of losses" in Article 66, paragraph (1) is deemed to be replaced with "inventory of property, balance sheet, and business report", the phrase "paragraph (1) of the preceding Article" in Article 424 of the Companies Act is deemed to be replaced with "Article 53, paragraph (1) of the Commodity Derivatives Transaction Act", the phrase " Order of the Ministry of Justice" in Article 847, paragraphs (1) and (4) of that Act is deemed to be replaced with "order of the competent ministry", and any other technical replacement of terms is specified by Cabinet Order.
- (3) The court supervising the liquidation of a member commodity exchange may seek opinions of or commission an investigation to the competent minister.
- (4) The competent minister may state an opinion to the court prescribed in the preceding paragraph.
- (5) The provisions of Article 71, paragraph (1) of the Commercial Registration Act apply mutatis mutandis to the registration of the dissolution of a member commodity exchange.

### **Section 3 Incorporated Commodity Exchanges**

#### **Subsection 1 General Provisions**

(License of an Incorporated Commodity Exchange)

Article 78 A person that seeks to become an incorporated commodity exchange must obtain a license from the competent minister.

(Applications for Licenses)

Article 79 (1) A person seeking to obtain the license referred to in the preceding Article must submit a written application stating the following information to the competent minister:

- (i) the trade name;
- (ii) the amount of stated capital;
- (iii) the location of the head office, branch offices, and any other business offices;
- (iv) the listed commodity or listed commodity index;
- (v) the names or trade names and addresses of the officers;
- (vi) the names or trade names of the trading participants and the listed commodity or listed commodity index of the commodity market in which the

trading participants will conduct transactions, and the fact that the trading participant has continuously engaged in the purchase and sale, etc. of the component products of listed commodities etc. in the course of trade for one year or more, if applicable.

- (2) The articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, market transactions surveillance committee rules, and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Licensing Criteria)

Article 80 (1) If the competent minister finds that an application for the license referred to in Article 78 conforms to the following criteria, the minister must grant the license:

- (i) the license applicant is a stock company whose stated capital is at least the amount specified by Cabinet Order;
- (ii) the commodity market which the application concerns conforms to the criteria prescribed in the following sub-items in accordance with the category of commodity market set forth in each sub-item:
  - (a) a commodity market for a listed commodity: the total number of trading participants that seek to conduct transactions in the commodity market is 20 or more, and the majority of them have continuously engaged in the purchase and sale, etc. of the component products of listed commodities of the commodity market in the course of trade for one year or more;
  - (b) a commodity market for a listed commodity index: the total number of trading participants that seek to conduct transactions in the commodity market is 20 or greater, and the majority of them have continuously engaged in the purchase and sale, etc. of the products underlying the listed commodity index of the commodity market in the course of trade for one year or more.
- (iii) the volume of transactions is expected to be sufficient for ensuring fair and smooth futures transactions in the listed commodity or listed commodity index which the application concerns, and in light of the status of transactions of the component products of listed commodities, etc., it is necessary and appropriate for the license applicant to become an incorporated commodity exchange in which the futures transactions are conducted, in order to facilitate the production and distribution of the component products of listed commodities, etc.;
- (iv) if the applicant seeks to open a commodity market for a listed commodity, the situation conforms to the criteria specified by Cabinet Order as a situation in which it is appropriate for the component products of listed

commodities to be traded on a single commodity market, in light of the status of transactions of the persons conducting purchase and sales, etc. of component products of listed commodities in the course of trade, and in light of circumstances of economic activities related to the component products of listed commodities;

- (v) if the applicant seeks to open a commodity market with two or more commodity indices as a single listed commodity index, most of the goods or electric power underlying those two or more commodity indices are the same;
  - (vi) the provisions of the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules do not violate laws and regulations, and the method or management of trade, qualification of trading participants, maximum number of trading participants if it is specified, particulars of deposits if the obligation to deposit a special deposit is specified, and other particulars prescribed in the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules are appropriate and sufficient for ensuring the fairness of transactions in the commodity market and for protecting consignors;
  - (vii) the license applicant has a sufficient personnel structure to operate a commodity market in an appropriate manner;
  - (viii) the license applicant is to be organized in a manner that conforms to the provisions of this Act as an incorporated commodity exchange;
  - (ix) the license applicant has in place the following organs:
    - (a) a board of company directors;
    - (b) a board of company auditors, an audit and supervisory committee, or nominating committee, etc. (meaning a nominating committee, etc. prescribed in Article 2, item (xii) of the Companies Act; the same applies in Article 96-27, paragraph (2), item (i), (b)); and
    - (c) a financial auditor.
- (2) If an application for the license referred to in Article 78 falls under one of the following items, the competent minister must not grant the license referred to in that Article notwithstanding the provisions of the preceding paragraph:
- (i) the license applicant falls under a person referred to in one of Article 15, paragraph (2), item (i), sub-items (c) through (e), sub-item (i), or sub-item (l);
  - (ii) the written application or documents that are required to be attached to the written application include a false statement about a material particular.
- (3) If an application is filed for the license referred to in Article 78 in which the applicant's term of existence as an incorporated commodity exchange or the expiration date of the commodity market is stated or recorded in the operational rules, the criteria set forth in paragraph (1), item (iii) is replaced



by the criteria that in light of the fact that the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions of the listed commodity or listed commodity index which the application concerns, and the status of transactions of the component products of listed commodities, etc., the applicant becoming an incorporated commodity exchange in which the futures transactions are conducted does not and is not likely to cause a significant hindrance to the production and distribution of the component products of listed commodities, etc., and for the application of these criteria and the criteria referred to in items (iv) and (v) of that paragraph, the competent minister is to make a judgment on those criteria for the term of existence or the period until the end of the expiry date.

(4) The provisions of Article 15, paragraphs (4) through (11) apply mutatis mutandis to the license referred to in Article 78.

(Articles of Incorporation)

Article 81 In addition to the particulars set forth in the items of Article 27 of the Companies Act, the following particulars must be stated in the articles of incorporation of an incorporated commodity exchange:

- (i) the particulars related to audits of and sanctions against trading participants;
- (ii) the particulars concerning the binding effect of the articles of incorporation, operational rules, entrustment contract regulations, and dispute resolution rules on contracts between trading participants concluded outside the commodity market;
- (iii) the particulars concerning the commodity market;
- (iv) if a self-regulatory committee will be established, an indication of this.

(Special Provisions on the Scope of the Subsidiary Companies of an Incorporated Commodity Exchange)

Article 81-2 If an incorporated commodity exchange is operating a financial instruments exchange market by obtaining the authorization referred to in the proviso to Article 3, paragraph (1) or the license referred to in Article 80, paragraph (1) of the Financial Instruments and Exchange Act, notwithstanding the provisions of Article 3-2, paragraph (1), the incorporated commodity exchange may have a company engaging in the business of operating a financial instruments exchange market and other incidental business as its subsidiary company (meaning a subsidiary company as prescribed in Article 3-2, paragraph (3)), without obtaining the authorization of the competent minister.

(Trading Participants of an Incorporated Commodity Exchange)

Article 82 (1) Pursuant to the provisions of the operational rules, an incorporated commodity exchange may grant a person trading qualification for conducting transactions in the commodity markets it operates.

(2) An incorporated commodity exchange must not grant trading qualification to a person falling under a person referred to in one of Article 15, paragraph (2), item (i), sub-items (b) through (j) or the items of Article 31, paragraph (1) (excluding item (ii)).

(3) A corporation surviving a merger or a corporation established by a merger is deemed to be the same corporation as that which has been extinguished as a result of the merger with regard to the application of the provisions of the preceding paragraph (limited to the part related to Article 15, paragraph (2), item (i), sub-items (c) through (e), and sub-item (i), and Article 31, paragraph (1), item (iv)).

#### (Succession to the Status of Trading Participant)

Article 83 If a trading participant merges, the corporation surviving the merger or the corporation established by the merger succeeds to the status of trading participant.

#### (Forfeiture of Trading Qualification)

Article 84 (1) A trading participant may forfeit the trading qualification granted pursuant to the provisions of Article 82, paragraph (1) with 30 days' advance notice.

(2) The period of advance notice referred to in the preceding paragraph may be extended by the operational rules; provided, however, that the period may not exceed one year.

(3) Beyond what is provided for in paragraph (1), a trading participant forfeits the trading qualification granted pursuant to the provisions of Article 82, paragraph (1) for the following reasons:

(i) all of the commodity markets in which the person conducts transactions have been closed pursuant to the provisions of Article 95;

(ii) death or dissolution; or

(iii) revocation of trading qualification.

#### (Changes to the Name of an Officer or Trading Participant)

Article 85 (1) If a particular set forth in Article 79, paragraph (1), item (iii), (v), or (vi) (excluding the location of the head office) changes, the incorporated commodity exchange must submit a written notification of change stating that fact to the competent minister without delay.

(2) The written notification of change referred to in the preceding paragraph must be accompanied by a document proving the change and documents

specified by order of the competent ministry.

(Limitation on the Holding of Voting Rights)

- Article 86 (1) It is prohibited for any person to acquire or possess voting rights (excluding voting rights of shares that do not allow voting rights to be exercised on all matters that may be resolved at shareholders meeting and including voting rights of shares that are deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act; the same applies hereinafter) constituting twenty percent or more (or fifteen percent or more, if there is a fact that is specified by order of the competent ministry as a fact that is presumed to have material influence on decisions about financial and operational policies; hereinafter referred to as the "threshold holding ratio" in this Article, Subsection 3, and Article 96-40, paragraph (4)) of voting rights of all the shareholders in an incorporated commodity exchange (including voting rights of shares that cannot be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on the Book-Entry Transfer of Bonds and Shares (Act No. 75 of 2001) and excluding those specified by order of the competent ministry in consideration of the manner in which they are acquired or held and other circumstances; hereinafter referred to as "subject voting rights" in this Section); provided, however, that this does not apply to voting rights acquired or possessed by a commodity exchange, commodity exchange holding company, financial instruments exchange (meaning a financial instruments exchange as prescribed in Article 2, paragraph (16) of the Financial Instruments and Exchange Act and limited to a financial instruments exchange specified by Cabinet Order; the same applies hereinafter), or financial instruments exchange holding company (meaning a financial instruments exchange holding company as prescribed in paragraph (18) of that Article and limited to a financial instruments exchange holding company specified by Cabinet Order; the same applies hereinafter).
- (2) If the number of subject voting rights that the person holds does not increase or in any other case specified by order of the competent ministry, the provisions of the main clause of the preceding paragraph do not apply to a person that is to acquire or hold a number of subject voting rights in an incorporated commodity exchange which is equal to or greater than the threshold holding ratio of voting rights of all the shareholders in an incorporated commodity exchange.
- (3) In the case referred to in the preceding paragraph, a person that comes to acquire or hold a number of subject voting rights that is greater than the threshold holding ratio of voting rights of all the shareholders in an incorporated commodity exchange (hereinafter referred to as a "specified

holder" in this Article) must notify the competent minister without delay that that person has become a specified holder and other matters specified by order of the competent ministry.

- (4) In the case referred to in paragraph (2), a specified holder must take the necessary measures to become the holder of a number of subject voting rights in the incorporated commodity exchange which is less than the threshold holding ratio within three months from the day on which the person has become a specified holder; provided, however, that this does not apply if the specified holder is a local government, etc. provided for in Article 96-19, paragraph (1) and has obtained the authorization of the competent minister pursuant to the provisions of that paragraph.
- (5) With regard to application of the provisions of the preceding paragraphs to the case set forth in one of the following items, the person is deemed to have acquired or to hold the subject voting rights specified in each item:
  - (i) a person that has or is to have the authority to exercise the subject voting rights in an incorporated commodity exchange or the authority to give instructions on the exercise of those voting rights pursuant to the provisions of a money trust contract or other contracts or based on the provisions of laws: the subject voting rights in question;
  - (ii) a person that is related to the person in question through a shareholding relationship, familial relationship, or other special relationship specified by Cabinet Order, has acquired or holds the subject voting rights in an incorporated commodity exchange: the subject voting rights acquired or held by the person with the special relationship to the person in question.
- (6) The necessary particulars for the application of the provisions of the preceding paragraphs are specified by Cabinet Order.

(Submission of Notification of Holding Subject Voting Rights)

- Article 86-2 (1) A person that has become the holder of subject voting rights exceeding five percent of voting rights of all the shareholders in an incorporated commodity exchange (hereinafter referred to as a "holder of subject voting rights" in this paragraph) must submit a notification of holding subject voting rights that states the subject voting rights holding rate (meaning the rate arrived at by dividing the number of subject voting rights held by the holder of subject voting rights by the number of voting rights of all the shareholders in the incorporated commodity exchange), the purpose of the holding, and other particulars specified by order of the competent ministry to the competent minister pursuant to the provisions of order of the competent ministry without delay.
- (2) The provisions of paragraph (5) of the preceding Article apply mutatis mutandis when the provisions of the preceding paragraph are applicable.

(Collection of Reports from and On-Site Inspections of a Person Submitting a Notification of Holding Subject Voting Rights)

- Article 86-3 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order the person submitting a notification of holding subject voting rights referred to in paragraph (1) of the preceding Article to submit reports or materials that should serve as a reference on their business or property, or may have ministry officials enter that person's office or business office and inspect their books and documents or any other article (limited to inspection necessary in relation to the statements in the notification of holding subject voting rights).
- (2) An official conducting an on-site inspection pursuant to the provisions of the preceding paragraph must carry an identification card and present it to the persons concerned.
- (3) The authority for an on-site inspection under the provisions of paragraph (1) must not be construed as being granted for criminal investigation purpose.

(Public Inspection of the Total Number of Issued Shares)

Article 87 An incorporated commodity exchange must make its total number of issued shares, the number of voting rights of all the shareholders, and other particulars specified by order of the competent ministry available for public inspection, pursuant to the provisions of order of the competent ministry.

(Authorization for Reduction of Stated Capital)

- Article 88 (1) If an incorporated commodity exchange seeks to reduce its stated capital, it must obtain the authorization of the competent minister pursuant to the provisions of order of the competent ministry.
- (2) If an incorporated commodity exchange seeks to increase its stated capital, it must notify the competent minister pursuant to the provisions of order of the competent ministry.

(Provisional Company Directors and Provisional Company Auditors)

- Article 89 (1) The competent minister may appoint a provisional company director, provisional representative director, provisional executive officer, provisional representative executive officer, or provisional company auditor if there is no one to perform the duties of the company director, representative director, executive officer, representative executive officer, or company auditor of an incorporated commodity exchange and the minister finds this to be necessary.
- (2) The provisions of Article 346, paragraphs (2) and (3), Article 351, paragraphs (2) and (3); and Article 401, paragraphs (3) and (4) of the Companies Act

(including as applied mutatis mutandis pursuant to Article 403, paragraph (3) and Article 420, paragraph (3) of that Act) do not apply to an incorporated commodity exchange.

(Registration Requested by the Competent Minister)

Article 90 (1) If the competent minister appoints a provisional company director, provisional representative director, provisional executive officer, provisional representative executive officer, or provisional company auditor pursuant to the provisions of paragraph (1) of the preceding Article, the minister must commission the registry office in the locality of the head office of the incorporated commodity exchange to register this.

(2) If the competent minister commissions a registration pursuant to the provisions of the preceding paragraph, the written commission must be accompanied by a document certifying that the minister has made a disposition related to the grounds that caused the registration.

(Prohibition on the Concurrent Holding of Positions by Officers)

Article 91 (1) An officer of an incorporated commodity exchange must not hold the position of officer at another commodity exchange.

(2) The provisions of the preceding paragraph apply mutatis mutandis to the liquidators of an incorporated commodity exchange.

(Disqualifying Conditions for Officers)

Article 92 The provisions of Article 49 apply mutatis mutandis to officers of an incorporated commodity exchange.

(Keeping and Inspection of Operational Rules)

Article 93 (1) An incorporated commodity exchange must keep its operational rules at each of its business offices, and must keep a trading participant register at its head office.

(2) The following information on each trading participant must be stated or recorded in a trading participant register:

(i) the name or trade name and address;

(ii) the date trading qualification was acquired;

(iii) the listed commodity or listed commodity index of the commodity market in which transactions are conducted; and

(iv) if it is a commodity derivatives business operator, the license date.

(3) The provisions of Article 57, paragraphs (4) and (5) apply mutatis mutandis to the operational rules and trading participant register that are kept pursuant to the provisions of paragraph (1). In such a case, the phrase "The member or creditor of a member commodity exchange" in paragraph (4) of that Article is

deemed to be replaced with "The shareholder, trading participant, or creditor of an incorporated commodity exchange"; the phrase "during the business hours of the member commodity exchange" in that paragraph is deemed to be replaced with "during the business hours of the incorporated commodity exchange"; the phrase "specified by the member commodity exchange" in the proviso to that paragraph is deemed to be replaced with "specified by the incorporated commodity exchange"; and the term "member commodity exchange" in paragraph (5) of that Article is deemed to be replaced with "incorporated commodity exchange".

- (4) A trading participant of a incorporated commodity exchange may make the requests set forth in the items of Article 31, paragraph (2) of the Companies Act with regard to the articles of incorporation of an incorporated commodity exchange; provided, however, that in making the request set forth in item (ii) or (iv) of that paragraph, the trading participant must pay the expenses specified by the incorporated commodity exchange.

#### (Expiration of Licenses)

Article 94 (1) If an incorporated commodity exchange falls under one of the following items, the license under Article 78 ceases to be effective:

- (i) the term of existence as an incorporated commodity exchange specified by its operational rules has expired;
  - (ii) the incorporated commodity exchange transfers all of its business through a split or a business transfer;
  - (iii) the number of trading participants becomes 10 or less for all of its commodity markets;
  - (iv) the incorporated commodity exchange is dissolved;
  - (v) a judgment invalidating its establishment, merger (but only if the entity to be established by the merger is an incorporated commodity exchange), or incorporation-type company split (but only if the entity to be established by the incorporation-type company split is an incorporated commodity exchange) has become final and binding.
- (2) If the license of an incorporated commodity exchange has expired pursuant to the provisions of item (ii), (iii), or (v) of the preceding paragraph, the person that is or was its representative must notify the competent minister of that fact without delay.

#### (Closure of Some Commodity Markets)

Article 95 If the number of trading participants conducting transactions in a commodity market that an incorporated commodity exchange operates becomes 10 or less, the incorporated commodity exchange must suspend the transactions in that commodity market and file an application for the

authorization to change its operational rules under the provisions of Article 156, paragraph (1), except in the case that falls under paragraph (1), item (iii) of the preceding Article.

(Authorization of a Merger of an Incorporated Commodity Exchange)

Article 96 (1) The following particulars do not become effective without the authorization of the competent minister:

- (i) a resolution of a shareholders meeting to dissolve an incorporated commodity exchange;
  - (ii) a merger in which incorporated commodity exchanges constitute all or some of the parties (excluding a merger referred to in Article 145, paragraph (1)).
- (2) If an incorporated commodity exchange is dissolved for a reason other than one set forth in the preceding paragraph, the person that was its representative must notify the competent minister of that fact without delay; provided, however, that this does not apply to cases specified by order of the competent ministry.

### **Subsection 2 Self-Regulatory Committees**

(Authority)

- Article 96-2 (1) An incorporated commodity exchange may have in place a self-regulatory committee pursuant to the provisions of its articles of incorporation.
- (2) A self-regulatory committee makes decisions on matters related to self-regulatory services (meaning self-regulatory services as prescribed in Article 5-2, paragraph (2); hereinafter the same applies in this Subsection) of the incorporated commodity exchange that has in place the self-regulatory committee (hereinafter referred to as a "specified incorporated commodity exchange" in this Subsection).
  - (3) A self-regulatory committee is deemed to be entrusted by the board of company directors to decide the matters related to self-regulatory services.
  - (4) The self-regulatory committee of a specified incorporated commodity exchange may not entrust executive officers or company directors with decisions on matters related to self-regulatory services.
  - (5) Notwithstanding the provisions of Article 362, paragraph (4), Article 399-13, paragraphs (4) through (6), and Article 416, paragraph (4) of the Companies Act, the board of company directors of a specified incorporated commodity exchange may not entrust executive officers or directors with decisions on matters related to the appointment of members of the self-regulatory committee prescribed in paragraph (2) of the following Article or the removal of members of the self-regulatory committee prescribed in Article 96-5, paragraph (1).



(Organization)

Article 96-3 (1) A self-regulatory committee must be composed of three or more members of the committee, and the majority of those members must be outside company directors.

(2) Members of a self-regulatory committee are selected from among the company directors of a specified incorporated commodity exchange and appointed by the resolution of the board of company directors.

(3) The resolution referred to in the preceding paragraph is adopted by a majority (or, if a higher proportion is specified in the articles of incorporation, at least that proportion) of the company directors that are entitled to participate in the vote are present and by a majority of those company directors (or, if a higher proportion is provided for in the articles of incorporation, at least that proportion), and by a majority of the outside company directors that are present at the meeting.

(4) A self-regulatory committee has a chairperson, and the chairperson is designated from among the outside company directors by a vote among the members of the self-regulatory committee.

(5) The chairperson of a self-regulatory committee presides over the affairs of the self-regulatory committee.

(6) A self-regulatory committee must designate in advance, a person from among the members of the self-regulatory committee who performs the duties of the chairperson of the self-regulatory committee when the chairperson is unavailable.

(Term of Office)

Article 96-4 (1) The term of office of a member of a self-regulatory committee is to be until the conclusion of the annual shareholders meeting in the last business year that ends within one year from the time the member was selected.

(2) Members of a self-regulatory committee may be reselected four times.

(Removal from Positions)

Article 96-5 (1) Members of a self-regulatory committee may be removed by resolution of the board of company directors of the specified incorporated commodity exchange.

(2) The resolution referred to in the preceding paragraph is adopted by a majority (or, if a higher proportion is provided for in the articles of incorporation, at least that proportion) of company directors that are entitled to participate in the vote are present and by a majority of those company directors (or, if a higher proportion is provided for in the articles of

incorporation, at least that proportion), and by the majority of the members of the self-regulatory committee that are present at the meeting.

- (3) If there is a vacancy resulting from a shortfall in the number of members of a self-regulatory committee provided for in Article 96-3, paragraph (1), a member of the self-regulatory committee that has left the position due to the expiration of the term of office or that has resigned continues to have rights and obligations as a member of the self-regulatory committee until a newly selected self-regulatory committee member (including a person that will temporarily perform the duties of a member of the self-regulatory committee referred to in the following paragraph) assumes the position.
- (4) In the case prescribed in the preceding paragraph, if the court finds it to be necessary, it may appoint a person to temporarily perform the duties of a member of the self-regulatory committee, at the petition of an interested party.
- (5) If the court appoints a person to temporarily perform the duties of a member of the self-regulatory committee as referred to in the preceding paragraph, it may specify the amount of the remuneration to be paid to the person by the specified incorporated commodity exchange.
- (6) The provisions of Article 868, paragraph (1), Article 870, paragraph (1) (limited to the part related to item (i)), Article 871, Article 872 (limited to the part related to item (iv)), Article 874 (limited to the part related to item (i)), Article 875, and Article 876 of the Companies Act apply *mutatis mutandis* if the petition referred to in paragraph (4) is filed. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

#### (Appointment and Dismissal of Directors)

Article 96-6 The provisions of Article 96-3, paragraph (3) apply *mutatis mutandis* when a specified incorporated commodity exchange which is a company with board of company auditors or a company with audit and supervisory committee decides the content of a proposal regarding the appointment or dismissal of a company director which is to be submitted to the shareholders meeting.

#### (Handling of Emergency Cases)

Article 96-7 (1) Notwithstanding the provisions of Article 96-2, paragraphs (2) and (3), if the representative director or representative executive officer of a specified incorporated commodity exchange finds it to be particularly necessary for ensuring the public interest or the protection of consignors, and there is urgent necessity in light of the circumstances, the representative director or representative executive officer may make a decision on a disposition against a member, etc. or on any other matter specified by order of the competent ministry related to self-regulatory services.

(2) If a specified incorporated commodity exchange makes a decision on a disposition against a member, etc. or on any other matter specified by order of the competent ministry related to self-regulatory services pursuant to the provisions of the preceding paragraph, the representative director or representative executive officer of the specified incorporated commodity exchange must promptly report this to the self-regulatory committee.

(Enjoinment of Acts of Executive Officers or Company Directors)

Article 96-8 (1) If the executive officer or company director of a specified incorporated commodity exchange performs an act or is likely to perform an act that violates a decision of the self-regulatory committee with regard to self-regulatory services, and if that act is likely to significantly hinder the appropriate operation of self-regulatory services, a member of the self-regulatory committee may demand the executive officer or company director to cease that act.

(2) In the case referred to in the preceding paragraph, if the court issues a provisional disposition ordering the executive officer or director referred to in that paragraph to cease that act, the court is not to have the executive officer or company director provide security.

(Treatment of Changes in Operational Rules)

Article 96-9 A specified incorporated commodity exchange must obtain the consent of the self-regulatory committee if it seeks to change or discontinue a particular specified in the operational rules or other rules of the specified incorporated commodity exchange, which is specified by order of the competent ministry as being related to self-regulatory services.

(Conveners)

Article 96-10 Self-regulatory committees are convened by the chairperson of the committee prescribed in Article 96-3, paragraph (4) (or by the person who performs the duties of the chairperson of the self-regulatory committee as prescribed in Article 96-3, paragraph (6) when the chairperson of the self-regulatory committee is unavailable; the same applies in the following Article and Article 96-12, paragraph (1)).

(Demanding the Convocation of Meetings)

Article 96-11 A member of a self-regulatory committee may convene a meeting of the self-regulatory committee by indicating the purpose of a self-regulatory committee meeting and the reasons for the convocation.

(Procedures for Convocation of Meetings)

Article 96-12 (1) To convene a meeting of the self-regulatory committee, the chairperson of the self-regulatory committee must send a notice to each member of the self-regulatory committee at least one week prior to the day of the self-regulatory committee meeting (or, if a shorter period of time has been specified by the self-regulatory committee, that period).

(2) Notwithstanding the provisions of the preceding paragraph, a meeting of the self-regulatory committee may be held without going through the procedures for convocation of meetings, with the consent of all members of the self-regulatory committee.

(3) If there is a request from the self-regulatory committee, the executive officer, company director, accounting advisor, or financial auditor of a specified incorporated commodity exchange must attend a meeting of the self-regulatory committee and provide explanations of the matters requested by the self-regulatory committee.

(Resolutions)

Article 96-13 (1) Resolutions of self-regulatory committees are adopted by a majority of the members of the self-regulatory committee that are entitled to participate in the vote are present and by a majority of those members of the self-regulatory committee, and a majority of the members of the self-regulatory committee who are outside company directors that are present at the meeting.

(2) A member of the self-regulatory committee with a special interest in the resolution referred to in the preceding paragraph may not participate in the vote.

(3) The minutes of the proceedings of a self-regulatory committee meeting must be prepared pursuant to the provisions of order of the competent ministry, and if the minutes are prepared in writing, the members of the self-regulatory committee present at the meeting must sign them or affix their names and seals to them.

(4) The member of the self-regulatory committee that the self-regulatory committee appoints must, without delay after a resolution under the provisions of paragraph (1) is adopted, report the content of the resolution to the board of company directors.

(5) The minutes referred to in paragraph (3) may be prepared as electronic or magnetic records. In such a case, the relevant persons must use the measures in lieu of signing or affixing their names and seals which are prescribed by order of the competent ministry, for the information that is recorded in the electronic or magnetic records.

(6) Beyond what is provided for in the preceding paragraphs, necessary particulars for the proceedings of the meeting and other particulars necessary for the operation of the self-regulatory committee are specified by the self-

regulatory committee.

(Minutes)

- Article 96-14 (1) A specified incorporated commodity exchange must keep the minutes referred to in paragraph (3) of the preceding Article at its head office for a period of ten years beginning from the day of the self-regulatory committee meeting.
- (2) The company directors of the incorporated commodity exchange may inspect or copy the following things:
- (i) if the minutes referred to in the preceding paragraph are prepared in writing, the document; and
  - (ii) if the minutes referred to in the preceding paragraph are prepared as electronic or magnetic records, a thing that displays the information that have been recorded in the electronic or magnetic records by the means specified by order of the competent ministry.
- (3) If it is necessary in order for a shareholder of the incorporated commodity exchange to exercise their rights, the shareholder may make a request to inspect or copy the things set forth in the items of the preceding paragraph concerning the minutes referred to in paragraph (1), with the permission of the court.
- (4) The provisions of the preceding paragraph apply *mutatis mutandis* if it is necessary for the creditor of an incorporated commodity exchange to pursue the liability of the members of the self-regulatory committee, or if it is necessary for the shareholder or member of a person that has the incorporated commodity exchange as its subsidiary company to exercise their voting rights.
- (5) The court may not give the permission referred to in paragraph (3) (including as applied *mutatis mutandis* pursuant to the provisions of the preceding paragraph; hereinafter the same applies in this Article) if the court finds that inspection or copying which the request referred to in that paragraph concerns is likely to cause substantial detriment to the incorporated commodity exchange, to a person that has the incorporated commodity exchange as its subsidiary company, or to a subsidiary company of the incorporated commodity exchange.
- (6) The provisions of Article 868, paragraph (1), Article 869, Article 870, paragraph (2) (limited to the part related to item (i)), Article 870-2, the main clause of Article 871, Article 872 (limited to the part related to item (v)), Article 872-2, the main clause of Article 873, Article 875, and Article 876 of the Companies Act apply *mutatis mutandis* to the permission referred to in paragraph (3). In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Omission of Reports)

Article 96-15 If the executive officer, company director, accounting advisor, or financial auditor of a specified incorporated commodity exchange notifies all members of the self-regulatory committee of the particulars that are required to be reported to the self-regulatory committee, they are not required to report those particulars to the self-regulatory committee.

(Public Inspections)

Article 96-16 A specified incorporated commodity exchange must make the register of the members of the self-regulatory committee available for public inspection.

(Decisions on Execution of Duties of Self-Regulatory Committees)

Article 96-17 The board of company directors of a specified incorporated commodity exchange must decide on the particulars that are specified by order of the competent ministry as necessary for a self-regulatory committee to execute its duties.

(Attendance of Company Auditors)

Article 96-18 A company auditor of a specified incorporated commodity exchange which is a company with a board of company auditors, an audit and supervisory committee member appointed by the audit and supervisory committee of a specified incorporated commodity exchange which is a company with audit and supervisory committee, or an audit committee member appointed by the audit committee of a specified incorporated commodity exchange which is a company with nominating committee, etc. may, if the audit committee member finds it to be necessary, attend the self-regulatory committee meeting of the specified incorporated commodity exchange and state their opinions.

### **Subsection 3 Major Shareholders**

(Authorization)

Article 96-19 (1) Notwithstanding the provisions of the main clause of Article 86, paragraph (1), pursuant to the provisions of the order of the competent minister and by obtaining the authorization of the competent minister, a local government or any other person specified by Cabinet Order (hereinafter referred to as the "local government, etc." in this Article, Article 96-28, paragraph (4), and Article 96-31) may acquire or hold a number of subject voting rights that is equal to or greater than the threshold holding ratio, but is not greater than 50 percent of all shareholders' voting rights in an

incorporated commodity exchange.

- (2) Notwithstanding the provisions of the preceding paragraph and the main clause of Article 86, paragraph (1), a local government, etc. that has obtained the authorization referred to in the preceding paragraph may acquire or hold subject voting rights exceeding 50 percent of all shareholders' voting rights in an incorporated commodity exchange if the number of subject voting rights that it holds does not increase or in any other case specified by order of the competent ministry.
- (3) In the case referred to in the preceding paragraph, a local government, etc. that has come to acquire or hold subject voting rights exceeding 50 percent of all shareholders' voting rights in an incorporated commodity exchange (hereinafter referred to as a "specified holding entity, etc." in this Article) must notify the competent minister without delay that it has become a specified holding entity, etc., and of any other particulars specified by order of the competent ministry.
- (4) In the case referred to in paragraph (2), a specified holding entity, etc. must take the necessary measures to become the holder of a number of subject voting rights that constitutes 50 percent or less of all shareholders' voting rights in an incorporated commodity exchange, within three months from the day on which it has become a specified holding entity, etc.
- (5) When a specified holding entity, etc. has become a holder of a number of subject voting rights that constitutes 50 percent or less of all shareholders' voting rights in an incorporated commodity exchange pursuant to the provisions of the preceding paragraph, it must notify the competent minister of this without delay.
- (6) The provisions of Article 3, paragraph (2) and paragraph (3) apply mutatis mutandis to the authorization referred to in paragraph (1).

(Criteria for Authorization)

- Article 96-20 (1) When an application is filed for the authorization referred to in paragraph (1) of the preceding Article, the competent minister must examine whether the application conforms to the criteria listed in the following items:
- (i) the exercise of the subject voting rights by an applicant for authorization is not likely to impair the sound and appropriate operation of the business of the incorporated commodity exchange; and
  - (ii) the applicant for authorization has a sufficient understanding of the public nature of the business of a commodity exchange.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the competent minister finds that the application conforms to the criteria referred to in that paragraph, the minister must grant the authorization, except in a case that falls under one of the following items:

- (i) the applicant for authorization is a person falling under any of the following persons:
  - (a) a person specified by order of the competent ministry as a person who is incapable of exercising the right of shareholders properly due to mental or physical disorder;
  - (b) a person who falls under any the persons referred to in Article 15, paragraph (2), item (i), sub-items (b) through (j);
  - (c) a minor that does not have the same capacity to act as an adult in business whose legal representative falls under any of the persons referred to in sub-item (a), (b), or (d);
  - (d) a corporation whose officers include a person who falls under any of the persons referred to in sub-items (a) through (c);
- (ii) the written application or documents that are required to be attached to the written application includes a false statement about a material particular.

(Collection of Reports and On-site Inspections)

Article 96-21 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order the major shareholder of an incorporated commodity exchange (meaning a person that has obtained the authorization referred to in Article 96-19, paragraph (1); hereinafter the same applies in this Subsection) to submit reports or materials that should serve as a reference on the business or property of the incorporated commodity exchange, or may have ministry officials enter the office or business office of the major shareholder and inspect their books and documents or any other article (limited to inspection necessary in relation to the business or property of the incorporated commodity exchange).

(2) The provisions of the preceding paragraph apply mutatis mutandis to a financial instruments exchange or financial instruments exchange holding company that holds a number of subject voting rights in an incorporated commodity exchange which is equal to or greater than the threshold holding ratio but is not greater than 50 percent.

(3) The provisions of Article 86-3, paragraphs (2) and (3) apply mutatis mutandis to an on-site inspection under the provisions of paragraph (1) (including as applied mutatis mutandis pursuant to the preceding paragraph).

(Supervisory Dispositions)

Article 96-22 (1) If the major shareholder of an incorporated commodity exchange violates this Act, etc., or if the competent minister finds that the act of a major shareholder is likely to impair the sound and appropriate operation of the business of an incorporated commodity exchange, the minister may revoke the authorization referred to in Article 96-19, paragraph (1) granted to



the major shareholder, or may order to take other measures necessary for supervision against the major shareholder.

- (2) A person whose authorization referred to in Article 96-19, paragraph (1) has been revoked pursuant to the provisions of the preceding paragraph must take the necessary measures to become the holder of a number of subject voting rights in an incorporated commodity exchange which is less than the threshold holding ratio, within three months from the date that the authorization is revoked.
- (3) If the competent minister finds it to be necessary when the minister seeks to make the disposition pursuant to the provisions of paragraph (1), the minister may ask a witness to appear and hear their opinion or ask a witness to submit an opinion or report, or ask an expert to appear and have the expert give an expert opinion.
- (4) The proceedings taking place on the date for a hearing on the revocation of authorization under the provisions of paragraph (1) must be opened to the public; provided, however, that this does not apply if the competent minister finds it to be necessary in order to maintain the confidential information related to the business of the person that is to become subject to the disposition secret, or finds it to be necessary in the public interest.
- (5) The provisions of paragraph (1) apply mutatis mutandis to a commodity exchange, commodity exchange holding company, financial instruments exchange, or financial instruments exchange holding company that holds a number of subject voting rights in an incorporated commodity exchange that is equal to or greater than the threshold holding ratio, but is not greater than 50 percent; and the provisions of paragraph (3) apply mutatis mutandis to the disposition pursuant to the provisions of paragraph (1) as applied mutatis mutandis pursuant to this paragraph.

(Expiration of Authorization)

- Article 96-23 (1) If the major shareholder of an incorporated commodity exchange comes to fall under one of the following items, the authorization referred to in Article 96-19, paragraph (1) ceases to be effective:
- (i) the major shareholder has failed to become a holder of a number of subject voting rights that is equal to or greater than the threshold holding ratio within six months from the date on which they obtain authorization;
  - (ii) the major shareholder has become the holder of a number of subject voting rights that is less than the threshold holding ratio; or
  - (iii) the major shareholder has become a commodity exchange, commodity exchange holding company, financial instruments exchange, or financial instruments exchange holding company.
- (2) If an authorization ceases to be effective pursuant to the provisions of the

preceding paragraph (in the case under item (iii) of that paragraph, this is limited to if the major shareholder becomes a financial instruments exchange or financial instruments exchange holding company), the person that was formerly a major shareholder must notify the competent minister of this without delay.

(Application, Mutatis Mutandis of Provisions on Subject Voting Rights)

Article 96-24 The provisions of Article 86, paragraph (5) apply mutatis mutandis when the provisions of Article 96-19, paragraphs (1) through (5), Article 96-20, paragraph (1), Article 96-21, paragraph (2), Article 96-22, paragraph (2) and paragraph (5), and paragraph (1) of the preceding Article are applicable.

#### **Subsection 4 Commodity Exchange Holding Companies**

(Authorization)

Article 96-25 (1) A person seeking to have an incorporated commodity exchange as its subsidiary company, or a person seeking to incorporate a company that is to have an incorporated commodity exchange as its subsidiary company, must obtain the authorization of the competent minister in advance; provided, however, that this does not apply if a commodity exchange, financial instruments exchange, or financial instruments exchange holding company is to have an incorporated commodity exchange as its subsidiary company.

(2) If the number of subject voting rights that a person holds does not increase or in any other case specified by order of the competent ministry, the provisions of the preceding paragraph do not apply if the person is to have an incorporated commodity exchange become its subsidiary company.

(3) In the case referred to in the preceding paragraph, a company that comes to have an incorporated commodity exchange as its subsidiary company (hereinafter referred to in this Article as a "specified holding company" in this Article) must take necessary measures for it to cease to be a company that has an incorporated commodity exchange as its subsidiary company, within three months from the day on which it becomes a specified holding company; provided, however, that this does not apply if the specified holding company obtains the authorization of the competent minister as a company that has an incorporated commodity exchange as its subsidiary company.

(4) The provisions of Article 96-19, paragraphs (3) and (5) apply mutatis mutandis to a specified holding company. In such a case, the term "the preceding paragraph" in paragraph (3) of that Article is deemed to be replaced with "Article 96-25, paragraph (2)"; the term "the preceding paragraph" in paragraph (5) of that Article is deemed to be replaced with "Article 96-25, paragraph (3)"; and the phrase "becomes the holder of a number of subject

voting rights that constitutes 50 percent or less of all shareholders' voting rights in an incorporated commodity exchange" in that paragraph is deemed to be replaced with "ceases to be a company that has an incorporated commodity exchange as its subsidiary company".

(5) The provisions of Article 3, paragraphs (2) and (3) apply mutatis mutandis to the authorization referred to in paragraph (1) and the proviso to paragraph (3).

(Application for Authorization)

Article 96-26 (1) A person seeking the authorization referred to in paragraph (1) or the proviso to paragraph (3) of the preceding Article must submit a written application for authorization stating the following particulars to the competent minister:

(i) the trade name;

(ii) the amount of stated capital;

(iii) the location of the head office, branch offices, and other business offices;  
and

(iv) the names and addresses of the officers.

(2) The articles of incorporation and the documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(3) In the case referred to in the preceding paragraph, if the articles of incorporation have been prepared in the form of an electronic or magnetic record, electronic or magnetic records may be attached to the written application in lieu of documents.

(Examination Criteria for Authorization)

Article 96-27 (1) When an application is filed for the authorization pursuant to the provisions of paragraph (1) of the preceding Article, the competent minister must examine whether the application conforms to the following criteria:

(i) the applicant for authorization or the company to be incorporated with the authorization (hereinafter referred to as an "applicant, etc. for authorization" in this Article) is a person whose sole purpose is to have an incorporated commodity exchange, an incorporated commodity exchange and a commodity exchange affiliated company (meaning a company engaging in business incidental to the operation of a commodity market; a company engaging in business that is connected to the business of operating a commodity market and business incidental thereto; a company engaging in the business of opening a market for trading carbon dioxide equivalent quotas and business incidental thereto; a company engaging in the business of opening a financial instruments exchange market and business incidental thereto; or a company engaging in business that is connected to the business of opening a financial

- instruments exchange market and business incidental thereto; the same applies in Article 96-36) as its subsidiary company;
- (ii) the applicant, etc. for authorization and the incorporated commodity exchange that is to become its subsidiary company have good prospects in terms of expected income and expenditure;
  - (iii) in light of its personnel structure, the applicant, etc. for authorization has the knowledge and experience to conduct business management of the incorporated commodity exchange that is to become its subsidiary company in an appropriate and fair manner; and
  - (iv) the applicant for authorization has sufficient social credibility.
- (2) If, as a result of having conducted an examination pursuant to the provisions of the preceding paragraph, the competent minister finds that the application conforms to the criteria referred to in that paragraph, the minister must grant the authorization, except in a case that falls under one of the following items:
- (i) the applicant, etc. for authorization is not a stock company (meaning a stock company with the following organs):
    - (a) a board of company directors;
    - (b) a company auditor, audit and supervisory committee, or nominating committee, etc.;
  - (ii) the applicant for authorization is a person that has been sentenced to a fine (including an equivalent sentence under foreign laws and regulations) pursuant to the provisions of this Act or pursuant to a foreign law or regulation that is equivalent to this Act, and for whom five years have not passed since the day on which the person finished serving the sentence or ceased to be subject to the sentence;
  - (iii) the applicant for authorization is a person that has had their authorization revoked pursuant to the provisions of Article 96-22, paragraph (1), Article 96-34, paragraph (1), or Article 96-40, paragraph (1), has had their permission revoked pursuant to the provisions of Article 159, paragraph (1) or paragraph (2), Article 186, paragraph (1) or paragraph (2), Article 235, paragraph (3), Article 236, paragraph (1), or Article 340, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 345), or has had their registration revoked pursuant to the provisions of Article 240-23, paragraph (1), and for whom five years have not passed since the date of the revocation, or is a person that had obtained the same kind of authorization, permission, or registration in a foreign state pursuant to the provisions of a foreign law or regulation that is equivalent to this Act (including a license or other administrative disposition similar to the authorization, permission, or registration) and has had the authorization, permission, or registration revoked, and for whom five years have not passed since the date of the revocation;

- (iv) the applicant, etc. for authorization has a person falling under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) as an officer; or;
- (v) the written application for authorization or documents that are required to be attached to the written application or an electronic or magnetic record includes a false statement or false record about a material particular.

(Limitation on the Holding of Voting Rights)

- Article 96-28 (1) It is prohibited for any person to acquire or hold a number of subject voting rights that constitute twenty percent or more (or fifteen percent or more, if there is a fact that is specified by order of the competent ministry as a fact that is presumed to have a material influence on decisions about financial and operational policies; hereinafter referred to as "threshold holding ratio" in this Subsection (excluding Article 96-40, paragraph (4))) of all shareholders' voting rights in a commodity exchange holding company; provided, however, that this does not apply if a commodity exchange or a financial instruments exchange acquires or holds the subject voting rights.
- (2) If the number of subject voting rights that a person holds does not increase or in any other case specified by order of the competent ministry, the provisions of the main clause of the preceding paragraph do not apply to the person that is to acquire or hold a number of subject voting rights in a commodity exchange holding company which is equal to or greater than the threshold holding ratio of all shareholders' voting rights.
- (3) In the case referred to in the preceding paragraph, a person that has come to acquire or hold a number of subject voting rights in a commodity exchange holding company that is equal to or greater than the threshold holding ratio of all shareholders' voting rights (hereinafter referred to as a "specified holder" in this Article) must notify the competent minister without delay that the person has become a specified holder and of other particulars specified by order of the competent ministry.
- (4) In the case referred to in paragraph (2), a specified holder must take necessary measures to become the holder of a number of subject voting rights in a commodity exchange holding company which is less than the threshold holding ratio within three months from the day on which that person has become a specified holder; provided, however, that this does not apply if the specified holder is a local government, etc. and the local government, etc. obtains the authorization referred to in Article 96-31, paragraph (1).
- (5) The necessary particulars for the application of the provisions of the preceding paragraphs are specified by Cabinet Order.

(Submission of a Notification of Holding Subject Voting Rights)

Article 96-29 A person that has become a holder of subject voting rights exceeding five percent of all shareholders' voting rights in a commodity exchange holding company (hereinafter referred to as "holder of subject voting rights" in this Article) must submit a notification of holding subject voting rights to the competent minister, pursuant to the provisions of order of the competent ministry and without delay, in which the subject voting rights holding rate (meaning the rate obtained by dividing the number of subject voting rights held by the holder of subject voting rights by the number representing all shareholders' voting rights in the commodity exchange holding company), the purpose of the holding, and other particulars specified by order of the competent ministry are stated.

(Collection of Reports from and On-site Inspections of Persons Submitting a Notification of Holding Subject Voting Rights)

Article 96-30 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order the person submitting a notification of holding subject voting rights referred to in the preceding Article to submit reports or materials that should serve as a reference on their business or property, or may have ministry officials enter the person's office or business office and inspect their books and documents or any other article (limited to inspection necessary in relation to the statements in the notification of holding subject voting rights).

(2) The provisions of Article 86-3, paragraphs (2) and (3) apply mutatis mutandis to an on-site inspection referred to in the preceding paragraph.

(Authorization Related to Major Shareholders)

Article 96-31 (1) Notwithstanding the provisions of the main clause of Article 96-28, paragraph (1), pursuant to the provisions of order of the competent ministry and by obtaining the authorization of the competent minister, a local government, etc. may acquire or hold a number of subject voting rights that is equal to or greater than the threshold holding ratio, but is not greater than 50 percent of all shareholders' voting rights in a commodity exchange holding company.

(2) Notwithstanding the provisions of the preceding paragraph and the main clause of Article 96-28, paragraph (1), a local government, etc. that has obtained the authorization referred to in the preceding paragraph may acquire or hold subject voting rights exceeding 50 percent of all shareholders' voting rights in a commodity exchange holding company if the number of subject voting rights that it holds does not increase or in any other case specified by order of the competent ministry.

(3) In the case referred to in the preceding paragraph, a local government, etc.

that has come to acquire or hold subject voting rights exceeding 50 percent of all shareholders' voting rights in a commodity exchange holding company (hereinafter referred to as a "specified holding entity, etc." in this Article) must take necessary measures to become the holder of a number of subject voting rights that constitutes 50 percent or less of all shareholders' voting rights in the commodity exchange holding company, within three months from the day on which it has become a specified holding entity, etc.

- (4) The provisions of Article 96-19, paragraphs (3) and (5) apply mutatis mutandis to a specified holding entity, etc. In such a case, the term "the preceding paragraph" in paragraph (3) of that Article is deemed to be replaced with "Article 96-31, paragraph (2)" and the term "the preceding paragraph" in paragraph (5) of that Article is deemed to be replaced with "Article 96-31, paragraph (3)".
- (5) The provisions of Article 3, paragraphs (2) and (3) apply mutatis mutandis to the authorization referred to in paragraph (1).

(Criteria for Authorization for Major Shareholders)

- Article 96-32 (1) When an application is filed for the authorization referred to in paragraph (1) of the preceding Article, the competent minister must examine whether the application conforms to the following criteria:
- (i) the exercise of the subject voting rights by an applicant for authorization is not likely to impair the sound and appropriate operation of the business of an incorporated commodity exchange that is the subsidiary company of the commodity exchange holding company; and
  - (ii) the applicant for authorization has a sufficient understanding of the public nature of the business of a commodity exchange.
- (2) The provisions of Article 96-20, paragraph (2) apply mutatis mutandis to the authorization referred to in paragraph (1) of the preceding Article. In such a case, the term "the preceding paragraph" in Article 96-20, paragraph (2) is deemed to be replaced with "Article 96-32, paragraph (1)".

(Collection of Reports and On-Site Inspections of Major Shareholders)

- Article 96-33 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order the major shareholder of a commodity exchange holding company (meaning a person that has obtained the authorization referred to in Article 96-31, paragraph (1); hereinafter the same applies in this Subsection) to submit reports or materials that should serve as a reference on the business or property of the commodity exchange holding company or an incorporated commodity exchange that is its subsidiary company, or may have ministry officials enter the office or business office of the major shareholder and inspect their books and documents or any other

article (limited to inspection necessary in relation to the business or property of the commodity exchange holding company or of an incorporated commodity exchange that is its subsidiary company).

- (2) The provisions of the preceding paragraph apply mutatis mutandis to a financial instruments exchange that holds a number of subject voting rights in a commodity exchange holding company that is equal to or greater than the threshold holding ratio, but is not greater than 50 percent.
- (3) The provisions of Article 86-3, paragraphs (2) and (3) apply mutatis mutandis to an on-site inspection under the provisions of paragraph (1) (including as applied mutatis mutandis pursuant to the preceding paragraph).

(Supervisory Dispositions for Major Shareholders)

Article 96-34 (1) If the major shareholder of a commodity exchange holding company violates this Act, etc., or if the competent minister finds that the act of a major shareholder is likely to impair the sound and appropriate operation of the business of an incorporated commodity exchange that is the subsidiary company of the commodity exchange holding company, the minister may revoke the authorization referred to in Article 96-31, paragraph (1), or may order other measures necessary for supervision to be taken against the major shareholder.

- (2) A person whose authorization referred to in Article 96-31, paragraph (1) has been revoked pursuant to the provisions of the preceding paragraph must take necessary measures to become the holder of a number of subject voting rights in a commodity exchange holding company which is less than the threshold holding ratio, within three months from the date of the revocation of that authorization.
- (3) The provisions of Article 96-22, paragraph (3) apply mutatis mutandis to a disposition pursuant to the provisions of paragraph (1), and the provisions of paragraph (4) of that Article apply mutatis mutandis to a hearing on the revocation of authorization pursuant to the provisions of paragraph (1).
- (4) The provisions of paragraph (1) apply mutatis mutandis to a commodity exchange or financial instruments exchange that holds a number of subject voting rights in a commodity exchange holding company which is equal to or greater than the threshold holding ratio, but is not greater than 50 percent; the provisions of Article 96-22, paragraph (3) apply mutatis mutandis to the disposition pursuant to the provisions of paragraph (1) as applied mutatis mutandis pursuant to this paragraph.

(Expiration of Authorization for Major Shareholders)

Article 96-35 (1) If the major shareholder of a commodity exchange holding company comes to fall under one of the following items, the authorization



referred to in Article 96-31, paragraph (1) ceases to be effective:

- (i) the major shareholder has failed to become the holder of a number of subject voting rights that is equal to or greater than the threshold holding ratio within six months from the date of obtaining authorization;
  - (ii) the major shareholder has become the holder of a number of subject voting rights that is less than the threshold holding ratio;
  - (iii) the major shareholder has become a commodity exchange or a financial instruments exchange.
- (2) If authorization ceases to be effective pursuant to the provisions of the preceding paragraph (in the case under item (iii) of that paragraph, this is limited to if the major shareholder becomes a financial instruments exchange), the person that was formerly the major shareholder must notify the competent minister of this without delay.

(Scope of Business)

- Article 96-36 (1) A commodity exchange holding company may not conduct any business other than the business management of an incorporated commodity exchange and of the commodity exchange affiliated companies which are its subsidiary companies and business incidental to those businesses.
- (2) A commodity exchange holding company, in performing its business, must endeavor to ensure appropriate business management of the incorporated commodity exchange that is its subsidiary company or of the incorporated commodity exchange and commodity exchange affiliated companies that are its subsidiary companies, so as not to impair the confidence in the public nature of the business of the incorporated commodity exchange that is its subsidiary company, and the sound and appropriate operation of its business.

(Scope of Subsidiary Companies)

- Article 96-37 (1) A commodity exchange holding company must not have a company that engages in business other than the business of operating a commodity market and business incidental thereto as its subsidiary company; provided, however, that if a commodity exchange holding company obtains the authorization of the competent minister pursuant to order of the competent ministry, the commodity exchange holding company may have as its subsidiary company a company engaging in business that is connected with the business of operating a commodity market and business incidental thereto, a company engaging in the business of opening a market for trading carbon dioxide equivalent quotas and business incidental thereto, a company engaging in the business of opening a financial instruments exchange market and business incidental thereto, or a company engaging in business that is connected with the business of opening a financial instruments exchange market and business

incidental thereto.

- (2) The provisions of Article 3, paragraphs (2) through (4) apply mutatis mutandis to the authorization referred to in the proviso to the preceding paragraph. In such a case, the phrase "the applicant's engagement in business which the application concerns" in paragraph (4) of that Article is deemed to be replaced with "the applicant having the company which the application concerns as its subsidiary company", and the phrase "business of operating a commodity market" in that paragraph is deemed to be replaced with "business of operating a commodity market of a commodity exchange".

(Revocation of Authorization)

Article 96-38 If a commodity exchange holding company is discovered to have fallen under one of the items of Article 96-27, paragraph (2) at the time it obtained the authorization referred to in Article 96-25, paragraph (1) or in the proviso to paragraph (3), the competent minister may revoke its authorization.

(Collection of Reports and On-Site Inspections)

Article 96-39 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a commodity exchange holding company or its subsidiary company to submit reports or materials that should serve as a reference on the business or property of that commodity exchange holding company, or may have ministry officials enter the office or business office of a commodity exchange holding company or its subsidiary company and inspect its books and documents or any other article (for its subsidiary company, limited to inspection necessary in connection with the business or property of the commodity exchange holding company).

- (2) The provisions of Article 86-3, paragraphs (2) and (3) apply mutatis mutandis to an on-site inspection under the provisions of the preceding paragraph.

(Supervisory Dispositions)

Article 96-40 (1) If a commodity exchange holding company violates this Act, etc., if the competent minister finds that the act of a commodity exchange holding company is likely to impair the sound and appropriate operation of the business of an incorporated commodity exchange which is its subsidiary company, or if a commodity exchange holding company fails to take the necessary measures to correct the act of its subsidiary company despite being likely that such an act will impair the sound operation of the business of an incorporated commodity exchange which is a subsidiary company of that commodity exchange holding company, the competent minister may revoke the authorization granted to the commodity exchange holding company under Article 96-25, paragraph (1), the proviso to Article 96-25, paragraph (3), or the

- proviso to Article 96-37, paragraph (1), or may order other measures necessary for supervision to be taken against the commodity exchange holding company.
- (2) If an officer of a commodity exchange holding company violates this Act, etc., the competent minister may order the commodity exchange holding company to dismiss that officer.
- (3) A commodity exchange holding company that has had the authorization referred to in Article 96-25, paragraph (1) or the proviso of paragraph (3) of that Article revoked pursuant to the provisions of paragraph (1) must promptly take the necessary measures for it to cease to be a company that has an incorporated commodity exchange as its subsidiary company.
- (4) If the measures referred to in the preceding paragraph are taken but the person that has taken those measures remains the holder of a number of subject voting rights in an incorporated commodity exchange which is equal to or greater than the threshold holding ratio, the date on which the person ceases to be a company that has the incorporated commodity exchange as its subsidiary company is deemed to be the date on which the person becomes a specified holder referred to in Article 86, paragraph (4), and the provisions of that paragraph apply.
- (5) The provisions of Article 96-22, paragraph (3) apply mutatis mutandis to a disposition pursuant to the provisions of paragraph (1) or (2), and the provisions of paragraph (4) of that Article apply mutatis mutandis to a hearing regarding the rescission of authorization or an order to dismiss an officer pursuant to the provisions of paragraph (1) or (2).

(Expiration of Authorization)

Article 96-41 (1) If a commodity exchange holding company comes to fall under one of the following items, the authorization referred to in Article 96-25, paragraph (1) or in the proviso to paragraph (3) of that Article ceases to be effective:

- (i) the company ceases to be a company that has an incorporated commodity exchange as its subsidiary company (excluding cases that are specified by order of the competent ministry in consideration of the manner in which the voting rights in the incorporated commodity exchange are acquired or held, or of any other circumstances);
- (ii) the company is dissolved;
- (iii) a judgment invalidating its incorporation, merger (but only if the company to be incorporated in the merger is a commodity exchange holding company), or incorporation-type company split (but only if the company incorporated in the incorporation-type company split is a commodity exchange holding company) becomes final and binding; or
- (iv) the company fails to become a company that has an incorporated

commodity exchange as its subsidiary company within six months from the date on which it has obtained authorization.

- (2) If an authorization ceases to be effective pursuant to the provisions of the preceding paragraph, the person that was the commodity exchange holding company must notify the competent minister of this without delay.

(Application, Mutatis Mutandis of Provisions on Subject Voting Rights)

Article 96-42 The provisions of Article 86, paragraph (5) apply mutatis mutandis when Article 96-25, paragraph (2), Article 96-19, paragraph (3) and paragraph (5) as applied mutatis mutandis pursuant to paragraph (4) of that Article, Article 96-28, paragraphs (1) through (4), Article 96-29, Article 96-31, paragraphs (1) through (3), Article 96-19, paragraph (3) and paragraph (5) as applied mutatis mutandis pursuant to paragraph (4) of that Article, Article 96-32, paragraph (1), Article 96-33, paragraph (2), Article 96-34, paragraph (2) and paragraph (4), Article 96-35, paragraph (1), and Article 96-40, paragraph (4) are applicable.

(Application, Mutatis Mutandis of Provisions on Supervisory Dispositions)

Article 96-43 The provisions of Article 96-36, paragraph (2) and Article 96-40, paragraph (1) apply mutatis mutandis to a commodity exchange that has an incorporated commodity exchange as its subsidiary company or to a commodity exchange that has a commodity exchange holding company as its subsidiary company; the provisions of Article 96-36, paragraph (2), Article 96-39, and Article 96-40, paragraph (1) apply mutatis mutandis to a financial instruments exchange or financial instruments exchange holding company that has an incorporated commodity exchange as its subsidiary company or to a financial instruments exchange that has a commodity exchange holding company as its subsidiary company; the provisions of Article 96-22, paragraph (3) apply mutatis mutandis to a disposition pursuant to the provisions of Article 96-40, paragraph (1) as applied mutatis mutandis pursuant to this Article.

## **Section 4 Transactions in a Commodity Market**

(Trading Qualification)

- Article 97 (1) Transactions in a commodity market operated by a member commodity exchange may only be conducted by a member of that member commodity exchange.
- (2) Transactions in a commodity market operated by an incorporated commodity exchange may only be conducted by a trading participant of that commodity market.
- (3) The provisions of the preceding two paragraphs do not apply if a person

conducts a commodity clearing transaction with which the person is entrusted by the member referred to in paragraph (1) or the trading participant referred to in the preceding paragraph.

(Trading Qualification in Respect of an Agreement on Intermarket Linkage)

Article 98 (1) Notwithstanding the provisions of the preceding Article, a commodity exchange, pursuant to the provisions of its articles of incorporation (or the operational rules, if it is an incorporated commodity exchange; the same applies in paragraph (1) of the following Article, Article 100, Article 101, paragraph (1), Article 109, paragraph (1), Article 113, paragraph (1) (including as applied mutatis mutandis pursuant to Article 114), and Article 114), may grant the member, etc. of another commodity exchange (including a facility in a foreign state equivalent to a commodity exchange; the same applies in the following paragraph) with which the commodity exchange has concluded an agreement on intermarket linkage, qualification for conducting transactions in a commodity market of that commodity exchange, within the scope of conducting transactions to complete the settlement of transactions based on the agreement on intermarket linkage.

(2) An agreement on intermarket linkage prescribed in the preceding paragraph means an agreement under which a commodity exchange and another commodity exchange mutually acknowledge that the members, etc. of another commodity exchange or the members, etc. of the commodity exchange may conduct transactions in the commodity market of the commodity exchange or in the commodity market of another commodity exchange for completing the settlement for transactions for which settlement has not been completed in the commodity market (including a market in a foreign state equivalent to a commodity market; hereinafter the same applies in this paragraph) of another commodity exchange or for which settlement has not been completed in the commodity market of the commodity exchange.

(3) A person granted trading qualification by a commodity exchange pursuant to the provisions of paragraph (1) is deemed to be a member, etc., within the scope of purpose prescribed in that paragraph, with regard to the application of the provisions of Article 101, paragraphs (1) through (4), Article 103, Article 104, paragraphs (3) and (4), Article 108, paragraph (1), Articles 113 through 115, Article 118, Article 157, Article 159, paragraph (1), Article 160, paragraph (1), Article 165, Article 179, and Article 188. In such a case, the term "withdraws from" in Article 113, paragraph (1) (including as applied mutatis mutandis pursuant to Article 114 and Article 188) is deemed to be replaced with "forfeits the qualification for conducting transactions in" and the term "expel that member" in Article 160, paragraph (1) and Article 165 is deemed to be replaced with "revoke the member's qualification that enable them to trade".

(Amount of Net Assets of a Member)

Article 99 (1) A commodity exchange must specify, for each commodity market, the minimum amount of net assets of a member, etc. trading in that commodity market in its articles of incorporation, pursuant to the provisions of order of the competent ministry; provided, however, that this does not apply if settlement is made by the method set forth in Article 105, item (ii) or (iii) in that commodity market.

- (2) In deciding the minimum amount of net assets of a member, etc. pursuant to the provisions of the preceding paragraph, a commodity exchange must ensure that the minimum amount of net assets of a member, etc. trading in two or more commodity markets or in the commodity market of another commodity exchange is higher than the minimum amount of net assets of other members, etc.
- (3) If the net assets of a member, etc. fall below the minimum amount under the provisions of the preceding two paragraphs, the commodity exchange must suspend the member's transactions in the commodity market and report this to the competent minister without delay.
- (4) In the case referred to in the preceding paragraph, if the net assets of the member, etc. reach or exceed the minimum amount under the provisions of paragraph (1) or (2) within six months from the day of the suspension of the member's transactions in the commodity market, the commodity exchange must cancel the suspension of transactions pursuant to the provisions of the preceding paragraph and report this to the competent minister without delay.
- (5) In the case referred to in paragraph (3), if the net assets of the member or trading participant does not reach the minimum amount under the provisions of paragraph (1) or (2) within the period prescribed in the preceding paragraph, the commodity exchange must expel the member or revoke the trading participant's trading qualification without delay.
- (6) If a commodity exchange suspends transactions pursuant to the provisions of paragraph (3), or expels a member or revokes a trading participant's trading qualification pursuant to the provisions of the preceding paragraph, the commodity exchange must notify that person to that effect without delay, indicating the reason for this.
- (7) The amount of net assets referred to in paragraphs (1) through (5) must be an amount arrived at by deducting the total amount of debts from the total amount of assets, and must be calculated pursuant to the provisions of order of the competent ministry.

(Number of Members)

Article 100 For each commodity market, a commodity exchange may set a

maximum number of members, etc. that trade in that commodity market, or of members, etc. that are entrusted to trade in that commodity market, by specifying the number in its articles of incorporation.

(Guarantee Funds)

Article 101 (1) A member, etc. must deposit guarantee funds with the commodity exchange for each commodity market in which the member, etc. trades, pursuant to the provisions of the articles of incorporation.

(2) A member, etc. must not trade in a commodity market until it has deposited the guarantee funds referred to in the preceding paragraph.

(3) Securities (meaning national government bond certificates, local government bond certificates, bond certificates issued by a corporation pursuant to special laws, corporate bond certificates and share certificates purchased and sold in a financial instruments exchange market, and other securities specified by Cabinet Order) may be used as guarantee funds.

(4) The allocation price of the securities referred to in the preceding paragraph must not exceed the price calculated pursuant to the provisions of order of the competent ministry in consideration of the market price.

(5) A person that entrusts a member, etc. that is a commodity derivatives business operator with transactions in a commodity market (referred to as the "transaction consignor" in the following paragraph and Article 108, paragraph (2)) has the right to receive payment from the guarantee funds of the member, etc. of that commodity market for a claim arising from that consignment, in preference over other creditors.

(6) If rights to receive preferential payment as referred to in the preceding paragraph conflict with each other, the right of a transaction consignor that is not a member, etc. takes precedence over the right of a transaction consignor that is a member, etc.

(7) A commodity exchange must not set off a claim held by a member, etc. that it has acquired by performing business of assuming commodity transaction debts against its obligations to that member, etc. related to guarantee funds.

(Operational Rules)

Article 102 (1) A commodity exchange must establish detailed regulations on the following particulars (excluding the particulars set forth in items (i) through (iii) and item (v) for a member commodity exchange) in connection with the commodity markets it operates, for each of its commodity market, in its operational rules:

(i) the particulars concerning its trading participants;

(ii) the particulars concerning guarantee funds;

(iii) the particulars concerning clearing margins;

- (iv) the goods or electric power which are commodities, commodity indices, or options (including spot options and specified swap options) underlying the transactions in the commodity market;
  - (v) the types of transaction for each listed commodity or listed commodity index;
  - (vi) the transaction period;
  - (vii) the start and end of a transaction;
  - (viii) the suspension of a transaction;
  - (ix) the particulars concerning the conclusion of transaction contracts and of its restrictions;
  - (x) delivery and other method of settlement; and
  - (xi) in addition to the particulars set forth in the preceding items, necessary particulars concerning trading.
- (2) With regard to the particulars set forth in item (ix) of the preceding paragraph, a commodity exchange must specify that measures may be taken to limit fluctuations in the quotations or the volume of transactions for which settlement has not been completed.
- (3) If, in addition to the particulars set forth in the item of paragraph (1), the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope (meaning the period during which the scope of a listed commodity or a listed commodity index of a commodity market (excluding a fixed-term commodity market prescribed in Article 156, paragraph (5), item (ii)) is changed (excluding discontinuation or narrowing of the scope; the same applies in that Article); hereinafter the same applies in this paragraph and that Article) of a commodity market has been decided, that term of existence, expiration date, or term for a change of scope is to be stated or recorded in the operational rules of an incorporated commodity exchange.

(Clearing Margin)

Article 103 (1) A commodity exchange must receive a deposit of clearing margin from the person prescribed in each of the following items in accordance with the category set forth in that item, in connection with transactions in a commodity market (limited to transactions in a commodity market for which settlement is made by the method set forth in Article 105, item (i), and excluding those set forth in Article 2, paragraph (10), item (i), (d); hereinafter the same applies in this Article) pursuant to the provisions of order of the competent ministry:

- (i) if a member, etc. conducts a transaction in a commodity market on its own account, or conducts a transaction in a commodity market with which it has been entrusted (limited to transactions with which it has been entrusted



- after receiving a deposit of customer margin based on the provisions of the following paragraph): the member, etc.;
- (ii) if a member, etc. conducts a transaction in a commodity market with which it has been entrusted (excluding a transaction with which it has been entrusted by a person that has entrusted the brokerage of the consignment (hereinafter referred to as a "broker" in this Article)) (excluding the case set forth in the preceding item): the person entrusting the member, etc. with that transaction (meaning the person that entrusts the member, etc. with the transaction in the commodity market, who is not a broker; the same applies in the following paragraph);
  - (iii) if a member, etc. conducts a transaction in a commodity market with which it has been entrusted (limited to one with which it has been entrusted by a broker that has received a deposit of brokerage margin based on the provisions of paragraph (3)) (excluding the case set forth in item (i)): the broker;
  - (iv) if a member, etc. conducts a transaction in a commodity market with which it has been entrusted (limited a transaction with which it has been entrusted by a broker) (excluding the case set forth in item (i) and the preceding item): the person that entrusted the brokerage of consignment of that transaction (hereinafter referred to as the "person that entrusts brokerage" in this Article).
- (2) In becoming entrusted with a transaction in a commodity market, a member, etc. may have the consignor or the broker (or the person that entrusts brokerage, if the transaction is one with which the member, etc. has been entrusted by a broker that has not received deposit of the brokerage margin based on the provisions of the following paragraph from the person that entrusts brokerage) deposit a customer margin with the member, etc. by obtaining the consent of that person, pursuant to the provisions of order of the competent ministry.
  - (3) In becoming entrusted with brokerage of consignment of a transaction in a commodity market, a broker may have the person that entrusts brokerage deposit brokerage margin with the broker, with the consent of that person, pursuant to the provisions of order of the competent ministry.
  - (4) A commodity exchange must manage the clearing margin deposited based on the provisions of paragraph (1), pursuant to the provisions of order of the competent ministry.
  - (5) The securities prescribed in Article 101, paragraph (3) or a warehouse receipt certifying retention of a listed commodity that is listed on a commodity market and that can be made the subject of delivery in order to settle a transaction in a commodity market operated by the commodity exchange or by another commodity exchange may be used as the clearing margin referred to in

paragraph (1), the consignor margin referred to in paragraph (2), or the brokerage margin referred to in paragraph (3).

- (6) The provisions of Article 101, paragraph (4) apply mutatis mutandis to the allocation price of the securities or warehouse receipt referred to in the preceding paragraph.
- (7) In the case referred to in paragraph (2) or (3), the member, etc. referred to in paragraph (2) or the broker referred to in paragraph (3) (hereinafter referred to as the "member, etc. or broker" in this paragraph and paragraph (10)), with the approval of the competent minister and pursuant to the provisions of order of the competent ministry, may conclude a contract with a bank or other financial institution specified by order of the competent ministry (hereinafter referred to as a "bank, etc.") to have an amount corresponding to the required clearing margin deposited with a commodity exchange on its behalf as instructed by the commodity exchange, and notify the commodity exchange of this.
- (8) In the case referred to in paragraph (1), item (i) (limited to one in which a member, etc. conducts a transaction in a commodity market on its own account) or in the case referred to in item (ii) or (iv) of that paragraph, the member, etc. prescribed in item (i) of that paragraph, the person entrusting the relevant party with the transaction on the commodity market prescribed in item (ii) of that paragraph, or the person that entrusts brokerage prescribed in item (iv) of that paragraph (hereinafter referred to as a "member, etc., person entrusting the member, etc. with the transaction, or person that entrusts brokerage" in this Article), pursuant to the provisions of order of the competent ministry, may conclude a contract with a bank, etc. to have an amount corresponding to the required clearing margin deposited with the commodity exchange on its behalf as instructed by the commodity exchange, and notify the commodity exchange of this.
- (9) In the cases referred to in the preceding two paragraphs, the commodity exchange may grant a grace period for the deposit of the whole or a part of the clearing margin corresponding to the amount of money to be deposited with the commodity exchange under the contract, but only as long as the contract remains in effect.
- (10) If a commodity exchange finds it to be necessary for ensuring the fairness of transactions in a commodity market or for the protection of consignors, it must instruct a bank, etc. that has concluded a contract referred to in paragraph (7) with a member, etc. or broker, or instruct that member, etc. or broker, to deposit an amount of money with the commodity exchange that corresponds to the required clearing margin or the clearing margin for which it has granted a grace period pursuant to the provisions of the preceding paragraph.
- (11) If a commodity exchange finds it to be necessary for ensuring the fairness of transactions in a commodity market, it must instruct a member, etc., a bank,

etc. that has concluded a contract referred to in paragraph (8) with the consignor or a person that entrusts brokerage, or a person entrusting the member, etc. with a transaction, or a person that entrusts brokerage, to deposit an amount of money with the commodity exchange that corresponds to the required clearing margin or the clearing margin for which it has granted a grace period pursuant to the provisions of paragraph (9).

(Grading of a Listed Commodity)

Article 104 (1) The method of grading, the grade table, and other particulars concerning the grading of a listed commodity must be specified by the operational rules.

(2) In the case referred to in the preceding paragraph, if a national standard has been set for the grading of a listed commodity for transactions in a commodity market, the commodity exchange must comply with that standard.

(3) A member, etc. must comply with the grading conducted by a commodity exchange pursuant to the provisions of the operational rules.

(4) If it is necessary to appoint a grader, a commodity exchange must appoint the grader from among persons other than the members, etc. of the commodity exchange.

(5) The grader referred to in the preceding paragraph must be an employee of the commodity exchange; provided, however, that this does not apply if the approval of the competent minister has been obtained.

(Settlement of Transactions)

Article 105 Settlement of transactions in commodity markets must be made for each commodity market, by one of the methods set forth in the following items, pursuant to the provisions of the articles of incorporation:

(i) through the commodity exchange;

(ii) by a commodity exchange assuming the obligations arising from transactions in a commodity market that it operates, with the approval referred to in Article 173, paragraph (1); or

(iii) by a commodity clearing organization assuming the obligations arising from transactions in a commodity market (other than the method set forth in the preceding item).

(Prohibition to Defer Settlement of Transactions)

Article 106 Transactions in a commodity market must not be settled by deferring the performance period, unless this is caused by a delay in grading by the commodity exchange or other causes attributable to the commodity exchange (including a commodity clearing organization that performs business of assuming commodity transaction debts for the commodity market, for a

commodity market in which settlement is made by the method set forth in item (iii) of the preceding Article).

(Notification of Irregular Start of Trading)

Article 107 When a commodity exchange has conducted transactions for the first time after the day on which it became possible to open a commodity market, or if it has irregularly opened, closed, or suspended trading, or cancelled a suspension, the commodity exchange must notify the competent minister to that effect without delay, for each commodity market.

(Damages Caused by Default)

Article 108 (1) If a member, etc. (limited to a member, etc. that is a clearing participant, if settlement is to be made by the method set forth in Article 105, item (ii) or (iii); hereinafter the same applies in this Article) causes damage to another member, etc. or a commodity clearing organization as a result of defaulting on an obligation arising from a transaction in a commodity market, the member, etc. or commodity clearing organization that incurred the damages has the right to receive payment out of the guarantee funds for the commodity market related to the transactions by the member, etc. that has caused the damage, and out of the clearing margin for those transactions (limited to the margin for transactions conducted on the member's, etc. own account), in preference over other creditors.

(2) Notwithstanding the provisions of the preceding paragraph, the right of a transaction consignor to receive preferential payment pursuant to the provisions of Article 101, paragraph (5) takes precedence over the right of a member, etc. or commodity clearing organization concerning the guarantee funds referred to in that paragraph.

(Special Deposits)

Article 109 (1) If settlement is to be made by the method set forth in Article 105, item (i), a commodity exchange may have a member, etc. deposit special deposit for each commodity market on which the member, etc. trades, pursuant to the provisions of the articles of incorporation.

(2) A member, etc. has the right to receive payment for a claim based on a party's default on an obligation arising from a transaction in a commodity market, out of the guarantee funds or clearing margin prescribed in paragraph (1) of the preceding Article pursuant to the provisions of the that paragraph, and if this amount is still insufficient, the member, etc. has the right to receive payment in preference over other creditors out of the special deposit of the member, etc. that is the other party to the transaction for that commodity market .

(3) If a member, etc. receives payment out of a special deposit pursuant to the

provisions of the preceding paragraph, and the amount is still insufficient, the member, etc. has the right to receive payment out of special deposit of the other member, etc. for that commodity market, in preference over other creditors and in accordance with the amount of their special deposit; provided, however, that this is limited to the amount that remains after deducting from the shortfall the amount obtained by multiplying the shortfall by the percentage of the amount of the member's, etc. special deposit for the commodity market to the total amount of special deposits for that commodity market of a member's, etc. other than the member, etc. that was the counterparty to the transactions prescribed in the preceding paragraph.

(4) If a payment under the preceding paragraph has been made, the other members, etc. prescribed in that paragraph have the right to claim reimbursement from the member, etc. that was the counterparty to the transactions prescribed in paragraph (2).

(Method of Managing Guarantee Funds)

Article 110 A commodity exchange may not manage funds that have been deposited as guarantee funds or special deposits, other than through holding national government bonds or any other method specified by order of the competent ministry.

(Disclosure of Total Transaction Volume)

Article 111 A commodity exchange must promptly notify its members, etc. of and also disclose the following particulars concerning a commodity market it operates, pursuant to order of the competent ministry:

- (i) the daily total transaction volume; and
- (ii) the amount of consideration for which a transaction is closed, or the contract price or agreed figure (hereinafter referred to as the "contract price, etc.") which is specified by order of the competent ministry.

(Reporting of Quotations and Transaction Volume)

Article 112 A commodity exchange must report the following particulars concerning a commodity market it operates to the competent minister, pursuant to the provisions of order of the competent ministry:

- (i) the daily and monthly quotations, transaction volumes, and other particulars specified by order of the competent ministry;
- (ii) if the daily volume of transactions conducted by a single member, etc. on its own account for which settlement has not been completed exceeds the volume that is specified by order of the competent ministry for each commodity market, or if the status of transactions in a commodity market satisfies the requirement specified by order of the competent ministry, the name of the

member, etc., the relevant volume, and other particulars specified by order of the competent ministry.

(Completing Settlement for Transactions Conducted Prior to Withdrawal or Forfeiture of Trading Qualification)

Article 113 (1) If a member withdraws from a member commodity exchange or a trading participant forfeits trading qualification in an incorporated commodity exchange, and the member or trading participant has not completed settlement for a transaction in a commodity market, the commodity exchange must have that person or the person that succeeds to the rights and obligations related to the transactions that have not been settled (hereinafter referred to as the "successor" in this Article) or another member, etc. (limited to another member, etc. who is able to trade in the relevant commodity market; hereinafter the same applies in this Article) complete settlement for the transactions, pursuant to the provisions of the articles of incorporation, unless there is a person that succeeds to those rights and obligations pursuant to the provisions of Article 37, paragraph (1) or (2), Article 40, or Article 83.

(2) In the case referred to in the preceding paragraph, the person or their successor (other than a successor that is a member or trading participant) is deemed to be a member or trading participant, to the extent required to complete the settlement of those transactions.

(3) If a commodity exchange has another member, etc. complete settlement of the transactions pursuant to the provisions of paragraph (1), a consignment contract is deemed to be established between the person or their successor and that member, etc.

(Completion of Settlement of Transactions in Cases of Suspension of Transactions)

Article 114 The provisions of the preceding Article apply mutatis mutandis if transactions of a member, etc. in a commodity market are suspended pursuant to the provisions of this Act or the articles of incorporation of the commodity exchange.

(Separate Accounting in the Books and Preservation of Books)

Article 115 A member, etc. must keep their accounting for transactions in a commodity market separate from that for other transactions in their books as well as preserve their books and other documents related to business pursuant to the provisions of order of the competent ministry.

(Prohibition of Wash Trading and Accommodation Trading)

Article 116 It is prohibited for any person to perform the following acts:

- (i) to conduct a purchase and sale transaction in a commodity market, without the intention to transfer ownership of the listed commodity (for electric power, the right to be supplied with electric power);
- (ii) to engage in wash trading in a commodity market, or to engage in trading in a commodity market under false pretenses, avoiding the use of one's name;
- (iii) to make an offer for a transaction in a commodity market after colluding with another person in advance to offer to conduct a transaction for oneself at the same time that the person makes an offer that will allow that transaction to be completed for the same amount of consideration or for the same contract price, etc.;
- (iv) to conduct a series of transactions in a commodity market which is likely to mislead people into believing that the transactions in a commodity market are thriving or which is likely to change the quotations on that commodity market, either independently or jointly with another person;
- (v) to entrust or become entrusted with one of the acts set forth in the preceding items, or to become entrusted with the brokerage of consignment of the entrustment;
- (vi) conducting transactions in a commodity market and making a purchase and sale or other transaction of component products of listed commodities, etc. or other transactions outside the commodity market with the intention of causing quotations on the commodity market to fluctuate;
- (vii) to spread information that quotations on a commodity market will fluctuate due to one's own or another party's market manipulation in relation to transactions in a commodity market; or
- (viii) to conduct transactions in a commodity market and intentionally make a false representation about a material particular or a representation about a material particular that is likely to be misleading.

(Compensatory Liability of a Person that Has Engaged in Wash Trading)

Article 117 (1) A person that has violated the provisions of the preceding Article is liable to compensate for damages that a person conducting a transaction in the commodity market or a person entrusting a person with the transaction, incurs in conducting or entrusting a transaction based on the amount of consideration or contract price, etc. that is formed due to that violation.

(2) A claim for damages under the provisions of the preceding paragraph is extinguished by prescription if it is not exercised within one year from the time the claimant learns that an act in violation of the provisions of the preceding Article has taken place or within three years from the time the act has taken place.

(Restriction on Transactions by a Member)

Article 118 If an excessive volume of transactions are conducted or are likely to be conducted through act of buying up, selling off, or any other method, or an unfair amount of consideration or contract price, etc. is formed or is likely to be formed on a commodity market, and the competent minister finds it to be necessary in order to maintain order in the commodity market and to protect the public interest, the minister may issue orders on the particulars specified in each of the following items to the persons set forth in that item:

- (i) a member, etc.: restrictions on transactions in a commodity market or on becoming entrusted with the transactions;
- (ii) a commodity exchange: to take measures to limit fluctuations in the quotations or volume of transactions for which settlement has not been completed in a commodity market that the commodity exchange operates, to change the amount of clearing margins, or other particulars specified by order of the competent ministry as particulars for ensuring the fairness of transactions in a commodity market;
- (iii) a commodity clearing organization: to change the amount of clearing margin or other particulars specified by order of the competent ministry as particulars for ensuring the fairness of transactions in a commodity market.

(Entrustment Contract Regulations)

Article 119 A commodity exchange must establish detailed regulations concerning the following particulars in its entrustment contract regulations:

- (i) requirements for becoming entrusted with transactions in a commodity market, etc. (excluding commodity clearing transactions; the same applies in item (iii));
- (ii) delivery and other methods of settlement;
- (iii) necessary particulars in becoming entrusted with transactions in a commodity market, etc., other than the particulars set forth in the preceding two items.

(Resolution of Disputes)

Article 120 (1) When a commodity exchange receives an application for mediation from a member, etc., commodity derivatives business operator, or consignor that is party to a dispute that has arisen between members, etc., between commodity derivatives business operators, or between a commodity derivatives business operator and a consignor concerning a transaction in that commodity exchange's commodity market, the commodity exchange is to act as an intermediary pursuant to the provisions of its dispute resolution rules.

(2) A commodity exchange must establish detailed regulations concerning the following particulars in its dispute resolution rules:

- (i) the procedures for applying for intermediation;



- (ii) the intermediation method;
- (iii) beyond what is set forth in the preceding two items, necessary particulars concerning intermediation.

### **Section 5 Entity Conversion**

(Entity Conversion from a Member Commodity Exchange to an Incorporated Commodity Exchange)

Article 121 A member commodity exchange may become an incorporated commodity exchange through an entity conversion.

(Entity Conversion Plan)

Article 122 (1) In order to implement the entity conversion referred to in the preceding Article (hereinafter referred to as "entity conversion" in this Section), a member commodity exchange must prepare an entity conversion plan and have the plan approved by a resolution of a general meeting of members.

(2) The provisions of Article 61 apply mutatis mutandis to the resolution referred to in the preceding paragraph.

(3) To convene the general meeting of members referred to in paragraph (1), an outline of the entity conversion plan and the articles of incorporation of the stock company after the entity conversion (hereinafter referred to as the "incorporated commodity exchange after entity conversion") must be presented.

(4) When a member commodity exchange implements an entity conversion, the member commodity exchange must provide for the following particulars in its entity conversion plan:

- (i) the purpose, trade name, location of the head office, and total number of authorized shares of the incorporated commodity exchange after entity conversion;
- (ii) beyond what is set forth in the preceding item, particulars that are specified by the articles of incorporation of the incorporated commodity exchange after entity conversion;
- (iii) the names of company directors and the name of the financial auditor of the incorporated commodity exchange after entity conversion;
- (iv) the particulars prescribed in the each of the following in accordance with the category of cases set forth in the item:
  - (a) if the incorporated commodity exchange after entity conversion is a company with an accounting advisor: the name of the accounting advisor of the incorporated commodity exchange after entity conversion;
  - (b) if the incorporated commodity exchange after entity conversion is a company with company auditors (including a stock company whose articles of incorporation provide that the scope of audits by a company auditor is

- limited to particulars related to accounting): the names of the company auditors of the incorporated commodity exchange after entity conversion.
- (v) the number of shares in the incorporated commodity exchange after entity conversion which the members of the member commodity exchange implementing the entity conversion is to acquire upon entity conversion (if the incorporated commodity exchange after entity conversion is a company with class shares, the classes of shares and the number of shares in each class) or the method of calculating the number of the shares;
  - (vi) the particulars of the allotment of the shares referred to in the preceding item to members of the member commodity exchange implementing the entity conversion;
  - (vii) if, upon entity conversion, the incorporated commodity exchange after entity conversion is to deliver money to the members of the member commodity exchange implementing the entity conversion in lieu of their equity interest, the amount of money or the method of calculating the amount;
  - (viii) in the case prescribed in the preceding item, the particulars concerning the allotment of money referred to in that item to members of the member commodity exchange implementing the entity conversion;
  - (ix) the particulars concerning the amount of stated capital and reserves of the incorporated commodity exchange after entity conversion;
  - (x) the day on which the entity conversion is to come into effect (hereinafter referred to as the "effective date" in this Section);
  - (xi) beyond what is set forth in the preceding items, the particulars specified by order of the competent ministry.
- (5) If an incorporated commodity exchange after entity conversion is a company with audit and supervisory committee, the particulars set forth in item (iii) of the preceding paragraph (limited to the particulars regarding company directors of an incorporated commodity exchange after entity conversion) must be specified separately for company directors who are audit and supervisory committee members and other company directors.

(Keeping and Inspection of Documents Related to an Entity Conversion Plan)

- Article 123 (1) A member commodity exchange implementing an entity conversion must keep the documents or electronic or magnetic records that state or contain the content of the entity conversion plan and other particulars specified by order of the competent ministry at its principal office, during the period from 10 days prior to the day of the general meeting of members as referred to in paragraph (1) of the preceding Article until the day preceding the day on which the entity conversion comes into effect.
- (2) The member or creditor of a member commodity exchange implementing an

entity conversion may make the following requests to the member commodity exchange at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange implementing the entity conversion:

- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that have been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (3) If a member commodity exchange implementing an entity conversion has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

(Objection by Creditors)

Article 124 (1) The creditor of a member commodity exchange implementing an entity conversion may state an objection to the member commodity exchange with regard to the entity conversion.

(2) A member commodity exchange implementing an entity conversion must issue public notice of the following particulars in the Official Gazette, and must issue a notice of those particulars to its known creditors individually; provided, however, that the period referred to in item (ii) may not be shorter than one month:

- (i) that an entity conversion will be implemented;
- (ii) that creditors may state an objection within a certain period.

(3) Notwithstanding the provisions of the preceding paragraph, if a member commodity exchange implementing an entity conversion issues public notice under the provisions of that paragraph in the Official Gazette as well as by the means of public notice set forth in Article 11, paragraph (6), item (ii) or (iii) in accordance with the provisions of the articles of incorporation pursuant to the provisions of that paragraph, the member commodity exchange is not required to give individual notice under the provisions of the preceding paragraph.

(4) If a creditor does not state an objection within the period referred to in paragraph (2), item (ii), the creditor is deemed to have approved the entity conversion.

(5) If a creditor states an objection within the period referred to in paragraph (2),

item (ii), the member commodity exchange implementing the entity conversion must make a payment or provide suitable collateral to the creditor, or deposit suitable property with a trust company, etc. (meaning a trust company or a financial institution engaged in trust business (meaning a financial institution that has obtained the authority under Article 1, paragraph (1) of the Act on the Provision of Trust Services by Financial Institutions (Act No. 43 of 1943)); the same applies hereinafter) for the purpose of ensuring that the creditor receive the payment; provided, however, that this does not apply if the entity conversion is not likely to harm the creditor.

(Keeping and Inspection of Documents on the Progress of the Entity Conversion Procedure)

- Article 125 (1) The incorporated commodity exchange after entity conversion must keep the documents or electronic or magnetic records referred to in Article 123, paragraph (1) and documents or electronic or magnetic records that state or contain the progress of the procedure pursuant to the provisions of the preceding Articles and other particulars specified by order of the competent ministry as those related to entity conversion at its head office, during the period of six months from the day on which the entity conversion comes into effect.
- (2) The shareholder or creditor of an incorporated commodity exchange after entity conversion may make the following requests to the incorporated commodity exchange at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost specified by the member commodity exchange implementing the entity conversion:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that have been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that have been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (3) If an incorporated commodity exchange after entity conversion has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

(Allotment of Shares to Members)

Article 126 (1) The member of a member commodity exchange is to receive an allotment of shares in the incorporated commodity exchange after entity conversion or an allotment of money, as specified by the entity conversion plan.

(2) The provisions of Article 234, paragraphs (1) through (5), Article 868, paragraph (1), Article 869, Article 871, Article 874 (limited to the part related to item (iv)), Article 875, and Article 876 of the Companies Act apply mutatis mutandis if shares or money is allotted pursuant to the provisions of the preceding paragraph. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Amount Required to be Reported as Stated Capital)

Article 127 The amount that is required to be reported as the stated capital of an incorporated commodity exchange after entity conversion is specified by order of the competent ministry.

(Amount Required to be Reported as Capital Reserves)

Article 128 The amount that is required to be reported as the capital reserves at the time of entity conversion and other particulars necessary for the calculation at the time of entity conversion are specified by order of the competent ministry.

(Issuance of Shares upon Entity Conversion)

Article 129 At the time of an entity conversion, a member commodity exchange may issue shares in the incorporated commodity exchange after entity conversion, in addition to allotting shares under the provisions of Article 126, paragraph (1). In such a case, the member commodity exchange must specify the following particulars in the entity conversion plan:

- (i) the number of shares issued pursuant to the provisions of this Article (hereinafter referred to as the "shares issued upon entity conversion" in this Section) (if it is a company with class shares, the classes and the number of shares issued upon entity conversion; hereinafter the same applies in this Section);
- (ii) the amount to be paid in for the shares issued upon entity conversion (meaning the amount of money to be paid in or property other than money to be delivered in exchange for a single share issued upon entity conversion; hereinafter the same applies in this Section) or the method of calculating the amount;
- (iii) if property other than money is to be the subject of contribution, that fact and the content and value of the property;
- (iv) the date for the payment of money or for the delivery of the property referred to in the preceding item to be made in exchange for a share issued

- upon entity conversion;
- (v) the particulars concerning the increased stated capital or capital reserves.

(Offers Involving Shares Issued upon Entity Conversion)

Article 130 (1) A member commodity exchange must notify a person that seeks to make an offer to subscribe for shares issued upon entity conversion of the following particulars:

- (i) the trade name of the incorporated commodity exchange after entity conversion;
  - (ii) the particulars set forth in the items of the preceding Article;
  - (iii) if money is to be paid in, the place that handles the payments;
  - (iv) beyond what is set forth in the preceding three items, particulars that are specified by order of the competent ministry.
- (2) A person making an offer to subscribe for shares issued upon entity conversion must deliver a document stating the following particulars to the member commodity exchange:
- (i) the name and address of the person that offers to subscribe;
  - (ii) the number of the shares issued upon entity conversion for which the person seeks to subscribe.
- (3) A person making the offer referred to in the preceding paragraph may provide a member commodity exchange with the particulars that are required to be stated in the document referred to in that paragraph by electronic or magnetic means with the consent of the member commodity exchange and pursuant to the provisions of Cabinet Order, in lieu of delivering the document referred to in the preceding paragraph. In such a case, the person making the offer is deemed to have delivered the document referred to in that paragraph.
- (4) If a particular set forth in the items of paragraph (1) changes, the member commodity exchange must immediately notify a person that has made the offer referred to in paragraph (2) (hereinafter referred to as an "offeror" in this Section) of that fact and the particular that has changed.
- (5) It is sufficient for a notice or demand that a member commodity exchange issues to an offeror to be sent to the address referred to in paragraph (2), item (i) (or, if the offeror notifies the member commodity exchange of another place or contact address for receiving notices or demands, that place or contact address).
- (6) The notice or demand referred to in the preceding paragraph is deemed to have arrived at the time that the notice or demand would normally arrive.

(Allotment of Shares Issued upon Entity Conversion)

Article 131 (1) A member commodity exchange must decide which persons among the offerors the shares issued upon entity conversion is to be allotted to, and

decide the number of the shares issued upon entity conversion to be allotted to those persons. In such a case, the member commodity exchange may reduce the number of shares issued upon entity conversion to be allotted to those offerors to below the number referred to in paragraph (2), item (ii) of the preceding Article.

- (2) A member commodity exchange must notify an offeror of the number of shares issued upon entity conversion that will be allotted to the offeror no later than the day preceding the due date referred to in Article 129, item (iv).

(Subscription for Shares Issued upon Entity Conversion)

Article 131-2 An offeror becomes a subscriber for shares issued upon entity conversion, in respect of the number of shares issued upon entity conversion allotted to that offeror by the member commodity exchange.

(Performance of Contributions)

Article 131-3 (1) On the due date referred to in Article 129, item (iv), a subscriber for shares issued upon entity conversion (excluding a person delivering the property referred to in Article 129, item (iii) (hereinafter referred to as "property contributed in kind" in this Section)) must pay the full amount of the amount to be paid in for each share issued upon entity conversion, at the place that handles the payment of the bank, etc. (meaning a bank, etc. prescribed in Article 34, paragraph (2) of the Companies Act) specified by the member commodity exchange.

- (2) On the due date referred to in Article 129, item (iv), a subscriber for shares issued upon entity conversion (limited to a person who delivers the property contributed in kind) must deliver the property contributed in kind that is equivalent to the full amount to be paid in for each share issued upon entity conversion.
- (3) A subscriber for shares issued upon entity conversion may not set off its obligation to make the payment under the provisions of paragraph (1) or the delivery under the provisions of the preceding paragraph (hereinafter referred to as the "performance of contributions" in this Section) against a claim that the subscriber has against the member commodity exchange.
- (4) The transfer of the right to become the shareholder of shares issued upon entity conversion through the performance of contributions may not be asserted against the incorporated commodity exchange after entity conversion.
- (5) If a subscriber for shares issued upon entity conversion fails to make the performance of contributions, they lose the right to become the shareholder of shares issued upon entity conversion through the performance of contributions.

(Time of Becoming a Shareholder)

Article 131-4 A subscriber for shares issued upon entity conversion becomes the shareholder of the shares issued upon entity conversion for which the subscriber has made the performance of contributions, on the day on which the entity conversion comes into effect.

(Restriction on the Invalidation or Rescission of a Subscription)

Article 131-5 (1) The provisions of the proviso to Article 93, paragraph (1) and Article 94, paragraph (1) of the Civil Code (Act No. 89 of 1896) do not apply to the manifestation of an intention to make an offer to subscribe for shares issued upon entity conversion or the allotment of those shares.

(2) Once one year has passed since the day on which an entity conversion comes into effect or once the subscriber for shares issued upon entity conversion exercises a right in respect of those shares, the subscriber may not rescind the subscription for shares issued upon entity conversion due to a mistake, fraud, or duress.

(Application, Mutatis Mutandis of the Companies Act When Property Other than Money is the Subject of Contribution)

Article 131-6 The provisions of Article 207, Article 212 (excluding paragraph (1), item (i)), Article 213 (excluding paragraph (1), items (i) and (iii)), Article 868, paragraph (1), Article 870 (limited to the part related to items (i) and (iv)); Article 871, Article 872 (limited to the part related item (iv)), Article 874 (limited to the part related to item (i)), Article 875, and Article 876 of the Companies Act apply mutatis mutandis to the case prescribed in Article 129, item (iii). In such a case, in Article 207, paragraph (1), paragraph (7) and paragraph (9), items (ii) through (v) and Article 212, paragraph (1), item (ii) and paragraph (2) of the Companies Act, the term "Article 199, paragraph (1), item (iii)" is deemed to be replaced with "Article 129, item (iii) of the Commodity Derivatives Transaction Act"; in Article 207, paragraph (4), paragraph (6), and paragraph (9), item (iii) and Article 213, paragraph (1), item (ii) of that Act, the term "Order of the Ministry of Justice" is deemed to be replaced with "order of the competent ministry", in Article 207, paragraph (8) and Article 212, paragraph (2) of that Act, the phrase "subscription for an offered share or a contract referred to in Article 205, paragraph (1)" is deemed to be replaced with "subscription for an offered share", in Article 207, paragraph (10), item (i) of that Act, the phrase "A company director, accounting advisor, company auditor or executive officer" is deemed to be replaced with "The president, director, or auditor of a member commodity exchange", in Article 212, paragraph (1), item (ii) of that Act, the term "Article 209, paragraph (1)" is deemed to be replaced with "Article 131-4 of the Commodity Derivatives Transaction Act", in Article 870, item (vii) of that Act, the phrase



"Article 199, paragraph (1), item (iii) or Article 236, paragraph (1), item (iii)" is deemed to be replaced with "Article 129, item (iii) of the Commodity Derivatives Transaction Act", and other necessary technical replacement of terms is specified by Cabinet Order.

(Application, Mutatis Mutandis of the Companies Act to Liabilities of a Subscriber to the Shares Issued upon Entity Conversion in Cases of Falsifying the Performance of Contributions)

Article 131-7 The provisions of Article 209, paragraphs (2) and (3), Article 213-2, and Article 213-3 of the Companies Act apply mutatis mutandis to shares issued upon entity conversion. In such a case, the term "Article 208, paragraph (1)" in Article 213-2, paragraph (1), item (i) of that Act is deemed to be replaced with "Article 131-3, paragraph (1) of the Commodity Derivatives Transaction Act", the term "Article 208, paragraph (2)" in item (ii) of that paragraph is deemed to be replaced with "Article 131-3, paragraph (2) of the Commodity Derivatives Transaction Act," the terms "directors (including executive officers in the case of a company with nominating committee, etc.)" and "Order of the Ministry of Justice" in Article 213-3, paragraph (1) of that Act are deemed to be replaced with "the president or directors of a member commodity exchange" and "order of the competent ministry," respectively, and other necessary technical replacement of terms is specified by Cabinet Order.

(Authorization for Entity Conversion)

Article 132 (1) An entity conversion does not become effective without the authorization of the competent minister.

(2) A person seeking the authorization referred to in the preceding paragraph must submit a written application stating the particulars set forth in Article 79, paragraph (1), items (i) through (iii), item (v), and item (vi) concerning the incorporated commodity exchange after entity conversion to the competent minister.

(3) A document stating the content of the entity conversion plan, the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules of the incorporated commodity exchange after entity conversion, and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Criteria for Authorization)

Article 133 (1) If the competent minister finds that an application for the authorization referred to in paragraph (1) of the preceding Article conforms to the following criteria, the minister must grant an authorization:

- (i) the amount of stated capital of the incorporated commodity exchange after entity conversion is equal to or greater than the amount specified by Cabinet Order as referred to in Article 80, paragraph (1), item (i);
  - (ii) the provisions of the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules of the incorporated commodity exchange after entity conversion do not violate laws and regulations, and the method or management of trade, qualification of trading participants, maximum number of trading participants if it is specified, particulars of deposits, if the obligation to deposit a special deposit is specified, and other particulars prescribed in the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules are appropriate and sufficient for ensuring the fairness of transactions in the commodity market and for protecting consignors;
  - (iii) the incorporated commodity exchange after entity conversion is to have a sufficient personnel structure to appropriately operate the commodity market;
  - (iv) the incorporated commodity exchange after entity conversion is to be organized as an incorporated commodity exchange in a manner that conforms to the provisions of this Act.
- (2) Notwithstanding the provisions of the preceding paragraph, if an application for the authorization referred to in paragraph (1) of the preceding Article falls under one of the following items, the competent minister must not grant the authorization referred to in that paragraph:
- (i) the incorporated commodity exchange after entity conversion has a person falling under a person referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) as an officer;
  - (ii) the application or a document that is required to be attached includes a false statement about a material particular.
- (3) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the authorization referred to in paragraph (1) of the preceding Article.
- (4) A stock company that has undergone an entity conversion by obtaining the authorization referred to in paragraph (1) of the preceding Article is deemed to have received the license referred to in Article 78 at the time of entity conversion.
- (5) A member that has been trading on a commodity market operated by a member commodity exchange that is to implement entity conversion, and that seeks to trade in a commodity market operated by the incorporated commodity exchange after entity conversion which is the same as that commodity market

(meaning a commodity market in which transactions are conducted for the same listed commodity or listed commodity index by the same method of trade; the same applies in Article 149, paragraphs (2) and (4)) is deemed to have been granted the trading qualification referred to in Article 82, paragraph (1) for that commodity market at the time of entity conversion.

(Registration)

Article 134 (1) Once a member commodity exchange implements an entity conversion, it must register the dissolution for the member commodity exchange implementing the entity conversion, register the incorporation for the head office of the incorporated commodity exchange after the entity conversion, and register the particulars set forth in the items of Article 930, paragraph (2) of the Companies Act for the branch offices of the incorporated commodity exchange after the entity conversion, within two weeks from the day on which the entity conversion becomes effective at the location of the principal office and the head office, and within three weeks from the day on which the entity conversion becomes effective at the location of the secondary office 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 must be attached to the written application for registration of incorporation referred to in the preceding paragraph:

(i) the entity conversion plan;

(ii) the articles of incorporation;

(iii) the minutes of the proceedings of the general meeting of members concerning the entity conversion of the member commodity exchange implementing the entity conversion;

(iv) a document certifying that the company directors of the incorporated commodity exchange after the entity conversion (or, if the incorporated commodity exchange after entity conversion is a company with company auditors (including a stock company whose articles of incorporation provide that audits by company auditors are limited to particulars related to accounting), the company directors and company auditors) have accepted the assumption of office;

(v) a document certifying the amount of net assets that the member commodity exchange before entity conversion has at the time of the entity conversion;

(vi) if an accounting advisor or a financial auditor has been appointed for the incorporated commodity exchange after entity conversion, the documents set forth in the items of Article 54, paragraph (2) of the Commercial Registration Act;

(vii) if an administrator of the shareholder register has been appointed, a

- document certifying that the contract with that person has been concluded;
- (viii) if public notice or demand under Article 124, paragraph (2) (or, if public notice is issued in the Official Gazette as well as by publication in a daily newspaper that publishes matters on current events or electronic public notice pursuant to the provisions of the paragraph (3) of that Article, public notice through those means) has been issued and a creditor has stated an objection, a document certifying that payment has been made or suitable collateral has been provided to the creditor or that suitable property has been deposited in trust for the purpose of enabling the creditor to receive the payment, or that the entity conversion is unlikely to harm the creditor;
- (ix) if shares have been issued upon entity conversion pursuant to the provisions of Article 129, the following documents:
- (a) a document certifying that offers to subscribe for shares have been made;
- (b) if money is the subject of contributions, a document certifying that the payments under the provisions of Article 131-3, paragraph (1) have been made;
- (c) if property other than money is the subject of contribution, the following documents:
1. if an inspector has been appointed, a document stating the investigation report by the inspector and its annexed documents;
  2. in the case set forth in Article 207, paragraph (9), item (iii) of the Companies Act as applied mutatis mutandis pursuant to Article 131-6, a document certifying the market price of the securities;
  3. in the case set forth in Article 207, paragraph (9), item (iv) of the Companies Act as applied mutatis mutandis pursuant to Article 131-6, a document stating the verification prescribed in that item and its annexed documents;
  4. in the case set forth in Article 207, paragraph (9), item (v) of the Companies Act as applied mutatis mutandis pursuant to Article 131-6, the account book stating the monetary claim referred to in that item.
- (d) if a judicial decision related to a report by an inspector has been rendered, a certified copy of that judicial decision.
- (3) The provisions of Article 76 and Article 78 of the Commercial Registration Act apply mutatis mutandis to the registration of the entity conversion of a member commodity exchange referred to in paragraph (1).

(Coming into Effect of Entity Conversions)

Article 135 (1) A member commodity exchange implementing an entity conversion becomes a incorporated commodity exchange on the effective date or the day on which it obtains the authorization of the competent minister referred to in Article 132, paragraph (1), whichever comes later.

- (2) A member commodity exchange implementing an entity conversion is deemed to have changed its articles of incorporation in respect of the particulars set forth in Article 122, paragraph (4), items (i) and (ii), in accordance with the provisions on those particulars, on the day on which the entity conversion comes into effect.
- (3) The member of a member commodity exchange implementing an entity conversion becomes the shareholder of the shares referred to in Article 122, paragraph (4), item (v), in accordance with the provisions on the particulars set forth in item (vi) of that paragraph, on the day on which the entity conversion comes into effect.
- (4) The provisions of the preceding three paragraphs do not apply if the procedure under Article 124 has not been completed or if the entity conversion is canceled.

Article 136 Deleted

(Action to Invalidate an Entity Conversion)

Article 137 The provisions of Article 828, paragraph (1) (limited to the part related to item (vi)) and paragraph (2) (limited to the part related to item (vi)), Article 834 (limited to the part related to item (vi)), Article 835, paragraph (1), Articles 836 through 839, Article 846, and Article 937, paragraph (3) (limited to the part related to item (i)) of the Companies Act apply mutatis mutandis to an action to invalidate an entity conversion. In such a case, the phrase "the head office of each company" in that paragraph is deemed to be replaced with "the head office and branch offices of the incorporated commodity exchange and the principal office and secondary offices of the member commodity exchange".

(Delegation to Cabinet Order)

Article 138 Beyond what is provided for in this Act, necessary particulars for the entity conversion of a commodity exchange are specified by Cabinet Order.

## **Section 6 Mergers**

### **Subsection 1 General Provisions**

- Article 139 (1) A member commodity exchange may merge with another member commodity exchange or with an incorporated commodity exchange. In such a case, the commodity exchanges that implements the merger must conclude a merger agreement.
- (2) If a member commodity exchange implements an absorption-type merger (meaning the merger of a commodity exchange with another commodity exchange, in which the commodity exchange surviving the merger (hereinafter

referred to as the "commodity exchange surviving the absorption-type merger" in this Section) succeeds to all of the rights and obligations of the commodity exchange that disappears in the merger (hereinafter referred to as the "commodity exchange dissolved in an absorption-type merger" in this Section); the same applies hereinafter) or a consolidation-type merger (meaning the merger of two or more commodity exchanges, in which the commodity exchange incorporated in the merger (hereinafter referred to as the "commodity exchange incorporated in the consolidation-type merger" in this Section) succeeds to all of the rights and obligations of the commodity exchanges dissolved as a result of the merger (hereinafter referred to as the "commodity exchange dissolved in the consolidation-type merger" in this Section); the same applies hereinafter), the commodity exchange surviving the absorption-type merger or the commodity exchange incorporated in the consolidation-type merger must be the entity prescribed in each of the following items in accordance with the category set forth in that item:

- (i) a merger between a member commodity exchange and a member commodity exchange: a member commodity exchange;
- (ii) a merger between a member commodity exchange and an incorporated commodity exchange: an incorporated commodity exchange.

#### **Subsection 2 Mergers Between a Member Commodity Exchange and a Member Commodity Exchange**

(Absorption-Type Merger Agreement Between a Member Commodity Exchange and a Member Commodity Exchange)

Article 140 If a member commodity exchange and a member commodity exchange implement an absorption-type merger, the following particulars must be specified in the absorption-type merger agreement:

- (i) the name and address of the commodity exchange surviving an absorption-type merger that is a member commodity exchange (hereinafter referred to as the "member commodity exchange surviving an absorption-type merger" in this Section) and the name and address of the commodity exchange dissolved in an absorption-type merger that is a member commodity exchange (hereinafter referred to as the "member commodity exchange dissolved in an absorption-type merger" in this Section);
- (ii) the day on which the absorption-type merger is to come into effect (hereinafter referred to as the "effective date" in this Section);
- (iii) beyond what is set forth in the preceding two items, particulars specified by order of the competent ministry.

(Consolidation-Type Merger Agreement Between a Member Commodity

Exchange and a Member Commodity Exchange)

Article 141 If a member commodity exchange and a member commodity exchange implement a consolidation-type merger, the following particulars must be specified in the consolidation-type merger agreement:

- (i) the name and address of the commodity exchange dissolved in the consolidation-type merger that is a member commodity exchange (hereinafter referred to as the "member commodity exchange dissolved in a consolidation-type merger" in this Section);
- (ii) the purpose, name, and location of the principal office of the commodity exchange incorporated in the consolidation-type merger that is a member commodity exchange (hereinafter referred to as the "member commodity exchange established in a consolidation-type merger" in this Section);
- (iii) beyond what is set forth in the preceding item, particulars specified by the articles of incorporation of the member commodity exchange established by a consolidation-type merger;
- (iv) the names of the persons that will become the president, directors, and auditors at the time of the establishment of the member commodity exchange established by a consolidation-type merger;
- (v) beyond what is set forth in the preceding items, particulars specified by order of the competent ministry.

### **Subsection 3 Mergers Between a Member Commodity Exchange and an Incorporated Commodity Exchange**

(Absorption-Type Merger Agreement Between a Member Commodity Exchange and an Incorporated Commodity Exchange)

Article 142 If a member commodity exchange and an incorporated commodity exchange implement an absorption-type merger, the following particulars must be specified in the absorption-type merger agreement:

- (i) the trade name and address of the commodity exchange surviving the absorption-type merger that is an incorporated commodity exchange (hereinafter referred to as the "incorporated commodity exchange surviving an absorption-type merger" in this Section) and the name and address of the member commodity exchange dissolved in an absorption-type merger;
- (ii) if the incorporated commodity exchange surviving an absorption-type merger is to deliver shares, etc. in lieu of equity interest (meaning shares or money; the same applies hereinafter) to the members of the member commodity exchange dissolved in an absorption-type merger at the time of the absorption-type merger, the following particulars related to those shares, etc.:
  - (a) if the shares, etc. are shares in the incorporated commodity exchange

- surviving an absorption-type merger, their number (or, for a company issuing class shares, the classes of shares and the number of shares in each class) or the method of calculating the number, and the particulars concerning the amount of stated capital and reserves of the incorporated commodity exchange surviving an absorption-type merger;
- (b) if the shares, etc. are money, the amount of the money or the method of calculating the amount.
- (iii) in the case prescribed in the preceding item, the particulars of the allotment of the shares, etc. referred to in that item to members of the member commodity exchange dissolved in an absorption-type merger;
- (iv) the effective date; and
- (v) beyond what is set forth in the preceding items, particulars specified by order of the competent ministry.

(Consolidation-Type Merger Agreement between a Member Commodity Exchange and an Incorporated Commodity Exchange)

Article 143 (1) If a member commodity exchange and an incorporated commodity exchange implement a consolidation-type merger, the following particulars must be specified in the consolidation-type merger agreement:

- (i) the name and address of the member commodity exchanges dissolved in a consolidation-type merger and the trade name and address of the incorporated commodity exchange dissolved in a consolidation-type merger that is an incorporated commodity exchange (hereinafter referred to as the "incorporated commodity exchange dissolved in a consolidation-type merger" in this Section);
- (ii) the purpose, trade name, location of the head office, and total number of authorized shares of the commodity exchange established by a consolidation-type merger that is an incorporated commodity exchange (hereinafter referred to as the "incorporated commodity exchange established by a consolidation-type merger" in this Section);
- (iii) beyond what is set forth in the preceding item, particulars specified in the articles of incorporation of the incorporated commodity exchange established by a consolidation-type merger;
- (iv) the name of the persons that are to become company directors at the time of the establishment of the incorporated commodity exchange established by a consolidation-type merger, and the name of the person that is to become the financial auditor at the time of its establishment;
- (v) the particulars prescribed in each of the following sub-items in accordance with the category of cases set forth in that sub-item:
  - (a) if the incorporated commodity exchange established by a consolidation-type merger is a company with an accounting advisor: the name of the



- person that is to become the accounting advisor at the time of the establishment of the incorporated commodity exchange established by a consolidation-type merger;
- (b) if the incorporated commodity exchange established by a consolidation-type merger is a company with a company auditor (including a stock company whose articles of incorporation provide that the scope of audits by a company auditor is limited to particulars related to accounting): the name of the person that is to become the company auditor at the time of the establishment of the incorporated commodity exchange established by a consolidation-type merger.
- (vi) the number of shares in the incorporated commodity exchange established by a consolidation-type merger (or, for a company with class shares, the classes of shares and the number of shares in each class) that the incorporated commodity exchange established by a consolidation-type merger is to deliver to members of the member commodity exchange dissolved in a consolidation-type merger or shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger in lieu of their equity interest or shares, at the time of the consolidation-type merger, or the method of calculating that number, and the particulars concerning the amount of stated capital or reserves of the incorporated commodity exchange established by a consolidation-type merger;
- (vii) the particulars concerning the allotment of the shares referred to in the preceding item to members of the member commodity exchange dissolved in a consolidation-type merger or shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger (excluding the commodity exchange dissolved in a consolidation-type merger);
- (viii) if the incorporated commodity exchange dissolved in a consolidation-type merger has issued share options, the following particulars concerning share options in or money of the incorporated commodity exchange established by a consolidation-type merger it is to deliver to the holders of share options in the incorporated commodity exchange dissolved in a consolidation-type merger at the time of the consolidation-type merger in lieu of the share options in the incorporated commodity exchange dissolved in a consolidation-type merger:
- (a) if share options in the incorporated commodity exchange established by a consolidation-type merger are delivered to the holders of share options in the incorporated commodity exchange dissolved in a consolidation-type merger, the content and number of share options or the method of calculating the number;
- (b) in the case prescribed in sub-item (a), if share options in the incorporated commodity exchange dissolved in a consolidation-type merger referred to in

- sub-item (a) are share options that are attached to bonds with share options, the fact that the incorporated commodity exchange established by a consolidation-type merger will succeed to the obligations regarding the bonds related to the bonds with share options, the classes of bonds subject to the succession, and the total amounts of the bonds in each class or the method of calculating the amounts;
- (c) if money is to be delivered to the holders of share options in the incorporated commodity exchange dissolved in a consolidation-type merger, the amount of that money or the method of calculating the amount.
- (ix) in the case prescribed in the preceding item, the particulars concerning the allotment of share options in the incorporated commodity exchange established by a consolidation-type merger or of the money referred to in that item to the holders of share options in the incorporated commodity exchange dissolved in a consolidation-type merger.
- (2) If an incorporated commodity exchange established by a consolidation-type merger is a company with audit and supervisory committee, the particulars set forth in item (iv) of the preceding paragraph (limited to the particulars regarding the persons to become company directors at the time of the establishment of the incorporated commodity exchange established by a consolidation-type merger) must be specified separately for the persons to become company directors who are audit and supervisory committee members at the time of the establishment of the incorporated commodity exchange established by a consolidation-type merger and the persons to become other company directors.
- (3) In the case referred to in paragraph (1), if the whole or a part of the incorporated commodity exchange dissolved in a consolidation-type merger is a company with class shares, the following particulars may be specified as the particulars set forth in item (vii) of that paragraph (limited to particulars concerning the shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger; the same applies in the following paragraph) in accordance with the features of the classes of shares issued by the incorporated commodity exchange dissolved in a consolidation-type merger:
- (i) if it decides not to allot shares in the incorporated commodity exchange established by a consolidation-type merger to shareholders of a certain class of shares, that fact and the class of those shares; or
- (ii) beyond what is set forth in the preceding item, if it decides to handle the allotment of shares in the incorporated commodity exchange established by a consolidation-type merger differently for each class of shares, that fact and the content of such different handling.
- (4) In the case prescribed in paragraph (1), the provisions concerning the particulars set forth in item (vii) of that paragraph must provide that shares in

the incorporated commodity exchange established by a consolidation-type merger will be issued in proportion to the number of shares (if the particulars set forth in item (ii) of the preceding paragraph are provided for, the number of shares in each class) held by the shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger (excluding shareholders of the commodity exchange dissolved in a consolidation-type merger and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

#### **Subsection 4 Merger Procedures for Member Commodity Exchanges**

(Procedures for a Member Commodity Exchange Dissolved in an Absorption-Type Merger)

- Article 144 (1) A member commodity exchange dissolved in an absorption-type merger must keep documents or electronic or magnetic records that state or record the content of the absorption-type merger agreement and the particulars specified by order of the competent ministry at its principal office, during the period from 10 days prior to the day of the general meeting of members as referred to in paragraph (4) until the day on which the absorption-type merger comes into effect.
- (2) The member or creditor of a member commodity exchange dissolved in an absorption-type merger may make the following requests to the member commodity exchange dissolved in an absorption-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange dissolved in an absorption-type merger:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that have been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (3) If a member commodity exchange dissolved in an absorption-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.
- (4) A member commodity exchange dissolved in an absorption-type merger must gain approval for the absorption-type merger agreement by a resolution of a

general meeting of members by the day preceding the effective date.

- (5) When an absorption-type merger is in violation of laws and regulations or the articles of incorporation and the members of the member commodity exchange dissolved in an absorption-type merger are likely to suffer disadvantages, the members of the member commodity exchange dissolved in an absorption-type merger may demand the member commodity exchange dissolved in an absorption-type merger to refrain from implementing the absorption-type merger.
- (6) The provisions of Article 124 apply mutatis mutandis to a member commodity exchange dissolved in an absorption-type merger.
- (7) A member commodity exchange dissolved in an absorption-type merger may change the effective date by an agreement with the commodity exchange surviving an absorption-type merger.
- (8) In the case referred to in the preceding paragraph, the member commodity exchange dissolved in an absorption-type merger must issue public notice of the new effective date by the day preceding the former effective date (or, if the new effective date comes before the former effective date, by the day preceding the new effective date).
- (9) If the effective date is changed pursuant to the provisions of paragraph (7), the new effective date is deemed to be the effective date and the provisions of this Section apply.

(Procedures for a Member Commodity Exchange Surviving an Absorption-Type Merger)

- Article 144-2 (1) A member commodity exchange surviving an absorption-type merger must keep documents or electronic or magnetic records that state or record the content of the absorption-type merger agreement and the particulars specified by order of the competent ministry at its principal office, during the period from 10 days prior to the day of the general meeting of members referred to in the following paragraph until the day on which six months have passed from the day the absorption-type merger comes into effect,.
- (2) A member commodity exchange surviving an absorption-type merger must obtain approval for the absorption-type merger agreement by a resolution of a general meeting of members by the day preceding the effective date.
  - (3) When an absorption-type merger is in violation of laws and regulations or the articles of incorporation and the members of the member commodity exchange surviving an absorption-type merger are likely to suffer disadvantages, the members of the member commodity exchange surviving an absorption-type merger may demand the member commodity exchange surviving an absorption-type merger to refrain from implementing the absorption-type merger.
  - (4) The provisions of Article 124 apply mutatis mutandis to a member commodity

exchange surviving an absorption-type merger.

- (5) A member commodity exchange surviving an absorption-type merger must prepare a document or an electronic or magnetic record that states or records the particulars concerning the rights and obligations of the member commodity exchange dissolved in an absorption-type merger to which the member commodity exchange surviving the absorption-type merger has succeeded to as a result of the absorption-type merger, and also states or records other particulars specified by order of the competent ministry as being related to the absorption-type merger, without delay after the day on which the absorption-type merger comes into effect.
- (6) A member commodity exchange surviving an absorption-type merger must keep the document or electronic or magnetic record referred to in the preceding paragraph at its principal office, during a six-month period beginning from the day on which the absorption-type merger comes into effect.
- (7) The member or creditor of a member commodity exchange surviving an absorption-type merger may make the following requests to the member commodity exchange surviving an absorption-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange surviving an absorption-type merger:
  - (i) a request to inspect a document referred to in paragraph (1) or the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in paragraph (1) or the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that have been recorded in an electronic or magnetic record referred to in paragraph (1) or the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in paragraph (1) or the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (8) If a member commodity exchange surviving an absorption-type merger has received a request under the provisions of the preceding paragraph, it must not refuse that request without legitimate grounds.

(Procedures for a Member Commodity Exchange Dissolved in a Consolidation-Type Merger)

Article 144-3 (1) A member commodity exchange dissolved in a consolidation-type merger must keep documents or electronic or magnetic records that state

or record the content of the consolidation-type merger agreement and the particulars specified by order of the competent ministry at its principal office, during the period from 10 days prior to the day of the general meeting of members referred to in paragraph (4) until the day of the establishment of the commodity exchange established by a consolidation-type merger.

- (2) The member or creditor of a member commodity exchange dissolved in a consolidation-type merger may make the following requests to a member commodity exchange dissolved in a consolidation-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange dissolved in a consolidation-type merger:
  - (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (3) If a member commodity exchange dissolved in a consolidation-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.
- (4) A member commodity exchange dissolved in a consolidation-type merger must obtain approval for the consolidation-type merger agreement by a resolution of a general meeting of members.
- (5) When a consolidation-type merger is in violation of laws and regulations or the articles of incorporation and the members of the member commodity exchange dissolved in a consolidation-type merger are likely to suffer disadvantages, the members of the member commodity exchange dissolved in a consolidation-type merger may demand the member commodity exchange dissolved in a consolidation-type merger to refrain from implementing the consolidation-type merger.
- (6) The provisions of Article 124 apply mutatis mutandis to a member commodity exchange dissolved in a consolidation-type merger.

(Procedures for a Member Commodity Exchange Established by a Consolidation-Type Merger)

Article 144-4 (1) The provisions of Section 2, Subsection 1 (excluding Article 7, Article 8, Article 11, paragraph (2), paragraph (4), and the first sentence of

- paragraph (5), Article 16, paragraph (1), Article 19, Article 20, paragraph (2), Articles 21 through 25, and Article 27) do not apply to the establishment of a member commodity exchange established by a consolidation-type merger.
- (2) The articles of incorporation of a member commodity exchange established by a consolidation-type merger are prepared by the member commodity exchange dissolved in a consolidation-type merger.
  - (3) A member commodity exchange established in a consolidation-type merger must prepare the documents or electronic or magnetic records that state or record the rights and obligations of the member commodity exchange dissolved in a consolidation-type merger to which the member commodity exchange established by a consolidation-type merger will succeed as a result of the consolidation-type merger, and also state or contain other particulars specified by order of the competent ministry as particulars related to the consolidation-type merger, without delay after the day of its establishment.
  - (4) a member commodity exchange established by a consolidation-type merger must keep the documents or electronic or magnetic records referred to in the preceding paragraph and documents or electronic or magnetic records that state or record the content of the consolidation-type merger agreement and other particulars specified by order of the competent ministry at its principal office, during the six-month period beginning from its establishment.
  - (5) The member or creditor of a member commodity exchange incorporated in a consolidation-type merger may make the following requests to the member commodity exchange established by a consolidation-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the member commodity exchange established by a consolidation-type merger:
    - (i) a request to inspect a document referred to in the preceding paragraph;
    - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
    - (iii) a request to inspect a thing that displays the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
    - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
  - (6) If a member commodity exchange established by a consolidation-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

#### **Subsection 5 Merger Procedures for Incorporated Commodity**

## **Exchanges**

### **Division 1 Procedures for the Incorporated Commodity Exchange Surviving an Absorption-Type Merger**

(Keeping and Inspection of Documents Related to Absorption-Type Merger Agreements)

Article 144-5 (1) An incorporated commodity exchange surviving an absorption-type merger (limited to the incorporated commodity exchange surviving an absorption-type merger in an absorption-type merger between a member commodity exchange and an incorporated commodity exchange; hereinafter the same applies in this Division) must keep documents or electronic or magnetic records that state or record the content of the absorption-type merger agreement and other particulars specified by order of the competent ministry at its head office, during the period from one of the following days, whichever comes the earliest, until the day on which six months have elapsed since the day on which the absorption-type merger comes into effect:

- (i) if approval for the absorption-type merger agreement must be obtained by a resolution of a shareholders meeting (including a general meeting of class shareholders), the day two weeks prior to the day of the shareholders meeting;
- (ii) the day of the notice under the provisions of Article 144-8, paragraph (1) or the day of the public notice under the provisions of paragraph (2) of that Article, whichever comes earlier;
- (iii) the day of the public notice under the provisions of Article 144-11, paragraph (2) or the day of the demand under the provisions of that paragraph, whichever comes earlier.

(2) The shareholder or creditor of an incorporated commodity exchange surviving an absorption-type merger may make the following requests to the incorporated commodity exchange surviving an absorption-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost specified by the incorporated commodity exchange surviving an absorption-type merger:

- (i) a request to inspect a document referred to in the preceding paragraph;
- (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
- (iii) a request to inspect a thing that displays the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
- (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an



electronic or magnetic means specified by order of the competent ministry or a request to be issued a document that states the information.

- (3) If an incorporated commodity exchange surviving an absorption-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

(Approval of Absorption-Type Merger Agreements)

Article 144-6 (1) An incorporated commodity exchange surviving an absorption-type merger must obtain approval for the absorption-type merger agreement by a resolution of a shareholders meeting by the day preceding the effective date.

- (2) In the following cases, the directors must explain that fact at the shareholders meeting referred to in the preceding paragraph:

(i) the amount specified by order of the competent ministry as the amount of obligations of the member commodity exchange dissolved in an absorption-type merger to which the incorporated commodity exchange surviving the absorption-type merger will succeed (referred to as the "amount of succeeded obligations" in the following item) exceeds the amount specified by order of the competent ministry as the amount of assets of the member commodity exchange dissolved in an absorption-type merger to which the incorporated commodity exchange surviving an absorption-type merger will succeed (referred to as the "amount of succeeded assets" in the following item);

(ii) the amount of money to be delivered to members of the member commodity exchange dissolved in an absorption-type merger by the incorporated commodity exchange surviving an absorption-type merger exceeds the amount arrived at by deducting the amount of succeeded obligations from the amount of succeeded assets.

- (3) If the assets of the member commodity exchange dissolved in an absorption-type merger to be succeeded to include shares in the incorporated commodity exchange surviving an absorption-type merger, the company directors must explain the particulars concerning those shares at the shareholders meeting referred to in paragraph (1).

- (4) If the incorporated commodity exchange surviving an absorption-type merger is a company with class shares, and the shares, etc. that are to be delivered to the members of the member commodity exchange dissolved in an absorption-type merger are shares in the incorporated commodity exchange surviving an absorption-type merger, the absorption-type merger does not come into effect without a resolution of a general meeting of class shareholders consisting of class shareholders of the classes of shares referred to in Article 142, item (ii), (a) (limited to shares with restriction on transfer which are not specified in the articles of incorporation referred to in Article 199, paragraph (4) of the Companies Act) (if there are two or more classes of shares associated with

those class shareholders, without the resolution of each general meeting of class shareholders whose constituents are the class shareholders categorized by the class of those two or more classes of shares); provided, however, that this does not apply if there is no shareholder that is able to exercise a voting right at the general meeting of class shareholders.

- (5) The resolution of a shareholders meeting referred to in paragraph (1) must be adopted by at least a two-thirds majority (or, if a larger ratio is specified by the articles of incorporation, that ratio) of the votes of the shareholders present, at a meeting in which shareholders holding a majority (or, if a ratio of one-third or more is specified by the articles of incorporation, at least that ratio) of the voting rights of the shareholders that are able to exercise voting rights at the shareholders meeting are present. In such a case, in addition to the requirement for the resolution, the incorporated commodity exchange surviving the absorption-type merger is not precluded from providing in its articles of incorporation that consent of a certain number or more of the shareholders is required or other requirements.
- (6) The provisions of the preceding paragraph apply mutatis mutandis to the general meeting of class shareholders referred to in paragraph (4).

(When Approval for an Absorption-Type Merger Agreement is not Required)  
Article 144-7 (1) The provisions of paragraphs (1) through (3) of the preceding Article do not apply if the ratio 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 ratio is specified by the articles of incorporation of the incorporated commodity exchange surviving an absorption-type merger, that ratio); provided, however, that this does not apply in the case set forth in the items of paragraph (2) of that Article or if the whole or a part of the shares, etc. to be delivered to the members of the member commodity exchange dissolved in an absorption-type merger are shares with a restriction on transfer in the incorporated commodity exchange surviving an absorption-type merger and the incorporated commodity exchange surviving an absorption-type merger is a public company (meaning a public company as prescribed in Article 2, item (v) of the Companies Act; hereinafter the same applies in this Section).

(i) the sum of the following amounts:

- (a) the amount arrived at by multiplying the number of shares in the incorporated commodity exchange surviving an absorption-type merger that will be delivered to the members of the member commodity exchange dissolved in an absorption-type merger by the amount of net assets per share (meaning the amount of net assets per share as prescribed in Article 141, paragraph (2) of the Companies Act);

(b) the sum of the amounts of money that will be delivered to the members of

- the member commodity exchange dissolved in an absorption-type merger;
- (ii) the amount calculated in the method specified by order of the competent ministry as the amount of net assets of the incorporated commodity exchange surviving an absorption-type merger.
- (2) In the case prescribed in the main clause of the preceding paragraph, if shareholders holding the number of shares specified by order of the competent ministry (limited to shares for which voting rights may be exercised at the shareholders meeting referred to in paragraph (1) of the preceding Article) notify the incorporated commodity exchange surviving an absorption-type merger that they are against the absorption-type merger within two weeks from the day of the notice referred to in paragraph (1) of the following Article or within two weeks from the day of the public notice referred to in paragraph (2) of that Article, the incorporated commodity exchange surviving an absorption-type merger must obtain approval for the absorption-type merger agreement by a resolution of a shareholders meeting, by the day preceding the effective date.
- (3) The provisions of paragraph (5) of the preceding Article apply *mutatis mutandis* to the shareholders meeting referred to in the preceding paragraph.

(Notices to Shareholders)

- Article 144-8 (1) An incorporated commodity exchange surviving an absorption-type merger must notify its shareholders that the absorption-type merger will be implemented as well as notify the name and address of the member commodity exchange dissolved in an absorption-type merger (in the case prescribed in Article 144-6, paragraph (3), including the particulars concerning the shares referred to in that paragraph) by 20 days prior to the effective date.
- (2) In the following cases, public notice may be substituted for the notice under the provisions of the preceding paragraph:
- (i) if the incorporated commodity exchange surviving the absorption-type merger is a public company; or
  - (ii) if the incorporated commodity exchange surviving an absorption-type merger has obtained approval for the absorption-type merger agreement by a resolution of the shareholders meeting referred to in Article 144-6, paragraph (1).
- (3) The provisions of Article 940, paragraph (1) (limited to the part related to item (i)) and paragraph (3) of the Companies Act apply *mutatis mutandis* if the incorporated commodity exchange surviving an absorption-type merger issues the public notice referred to in the preceding paragraph by the means set forth in Article 939, paragraph (1), item (iii) of that Act. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Demands to Refrain from Implementing an Absorption-Type Merger)

Article 144-9 When an absorption-type merger is in violation of laws and regulations or articles of incorporation and the shareholders of the incorporated commodity exchange surviving an absorption-type merger are likely to suffer disadvantages, the shareholders of the incorporated commodity exchange surviving an absorption-type merger may demand the incorporated commodity exchange surviving an absorption-type merger to refrain from implementing the absorption-type merger; provided, however, that this does not apply to cases prescribed in the main clause of Article 144-7, paragraph (1) (excluding the case prescribed in paragraph (2) of that Article).

(Share Purchase Demand)

Article 144-10 (1) If an absorption-type merger is to be implemented, a dissenting shareholder may demand that the incorporated commodity exchange surviving an absorption-type merger purchase its shares at a fair price; provided, however, that this does not apply to cases prescribed in the main clause of Article 144-7, paragraph (1) (excluding the case prescribed in paragraph (2) of that Article).

(2) The "dissenting shareholder" prescribed in the preceding paragraph means a shareholder provided for in each of the following items for the case set forth in that item:

(i) a resolution of a shareholders meeting (including a general meeting of class shareholders) is required in order to implement the absorption-type merger: the following shareholders:

(a) a shareholder that has notified the incorporated commodity exchange surviving an absorption-type merger that they are against the absorption-type merger prior to the shareholders meeting, and has dissented to the absorption-type merger at the shareholders meeting (limited to a shareholder that is able to exercise a voting right at the shareholders meeting);

(b) a shareholder that is not able to exercise a voting right at the shareholders meeting.

(ii) cases other than that prescribed in the preceding item: all shareholders.

(3) The provisions of Article 797, paragraphs (5) through (9), Article 798, Article 868, paragraph (1), Article 870, paragraph (2) (limited to the part related to item (ii)), Article 870-2, the main clause of Article 871, Article 872 (limited to the part related to item (v)), Article 872-2, the main clause of Article 873, Article 875, and Article 876 of the Companies Act apply mutatis mutandis to a demand under the provisions of paragraph (1). In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Objections of Creditors)

- Article 144-11 (1) The creditor of an incorporated commodity exchange surviving an absorption-type merger may state an objection to the incorporated commodity exchange surviving an absorption-type merger with regard to the absorption-type merger.
- (2) An incorporated commodity exchange surviving an absorption-type merger must issue public notice of the following particulars in the Official Gazette and must issue a notice of those particulars to its known creditors (including the bond administrator (meaning the bond administrator referred to in Article 702 of the Companies Act) if there is a bond administrator) individually; provided, however, that the period referred to in item (iv) may not be less than one month:
- (i) that an absorption-type merger is to be implemented;
  - (ii) the name and address of the member commodity exchange dissolved in an absorption-type merger;
  - (iii) the particulars specified by order of the competent ministry as those concerning the financial statements of the incorporated commodity exchange surviving an absorption-type merger;
  - (iv) that a creditor may state an objection within a certain period.
- (3) Notwithstanding the provisions of the preceding paragraph, if the incorporated commodity exchange surviving an absorption-type merger issues the public notice under the provisions of that paragraph in the Official Gazette as well as by the means set forth in Article 939, paragraph (1), item (ii) or (iii) of the Companies Act in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the incorporated commodity exchange surviving an absorption-type merger is not required to make individual demands under the provisions of the preceding paragraph.
- (4) If a creditor does not state an objection within the period referred to in paragraph (2), item (iv), the creditor is deemed to have approved the absorption-type merger.
- (5) If a creditor states an objection within the period referred to in paragraph (2), item (iv), the incorporated commodity exchange surviving an absorption-type merger must make a payment or provide suitable collateral to the creditor, or deposit suitable property with a trust company, etc. for the purpose of ensuring that the creditor receive the payment; provided, however, that this does not apply if the absorption-type merger is unlikely to harm the creditor.
- (6) The provisions of Article 940, paragraph (1) (limited to the part related to item (iii)) and paragraph (3) of the Companies Act apply mutatis mutandis if the incorporated commodity exchange surviving an absorption-type merger issues the public notice under the provisions of paragraph (2) by the means set forth in Article 939, paragraph (1), item (iii) of that Act. In such a case, the

necessary technical replacement of terms is specified by Cabinet Order.

- (7) In order for the bondholders to state an objection pursuant to the provisions of paragraph (1), a resolution of a bondholder meeting is required. In such a case, the court may extend the period for stating an objection for the bondholders, upon the petition of an interested person.
- (8) Notwithstanding the provisions of the preceding paragraph, the bond administrator may state an objection on behalf of the bondholders; provided, however, that this does not apply if it is otherwise provided in the contract for consignment under the provisions of Article 702 of the Companies Act.
- (9) The provisions of Article 868, paragraph (4), Article 870, paragraph (1) (limited to the part related to item (viii)), the main clause of Article 871, Article 872 (limited to the part related to item (iv)), Article 875, and Article 876 of the Companies Act apply mutatis mutandis to a case related to the petition referred to in paragraph (7).

(Keeping and Inspection of Documents Related to Absorption-Type Merger)

Article 144-12 (1) An incorporated commodity exchange surviving an absorption-type merger must prepare documents or electronic or magnetic records that state or record the particulars of the rights and obligations of the member commodity exchange dissolved in an absorption-type merger to which the incorporated commodity exchange surviving an absorption-type merger has succeeded as a result of the absorption-type merger, and of other particulars specified by order of the competent ministry as being related to the absorption-type merger, without delay after the day on which the absorption-type merger comes into effect.

- (2) The incorporated commodity exchange surviving an absorption-type merger must keep the documents or electronic or magnetic records referred to in the preceding paragraph at its head office, during the six-month period beginning from the day on which an absorption-type merger comes into effect.
- (3) The member or creditor of an incorporated commodity exchange surviving an absorption-type merger may make the following requests to the incorporated commodity exchange surviving the absorption-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the member or creditor must pay the cost specified by the incorporated commodity exchange surviving an absorption-type merger:
  - (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;

- (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (4) If an incorporated commodity exchange surviving an absorption-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

### **Division 2 Procedures for an Incorporated Commodity Exchange Dissolved in a Consolidation-Type Merger**

(Keeping and Inspection of Documents Related to Consolidation-Type Merger Agreements)

Article 144-13 (1) An incorporated commodity exchange dissolved in a consolidation-type merger (limited to the incorporated commodity exchange dissolved in a consolidation-type merger by a consolidation-type merger implemented between a member commodity exchange and an incorporated commodity exchange; hereinafter the same applies in this Division) must keep documents or electronic or magnetic records that state or record the content of the consolidation-type merger agreement and the particulars specified by order of the competent ministry at its head office, during the period from one of the following days, whichever comes the earliest, until the day on which the consolidation-type merger comes into effect:

- (i) the day two weeks prior to the shareholders meeting referred to in paragraph (1) of the following Article;
  - (ii) if approval for the consolidation-type merger agreement must be obtained by a resolution of a general meeting of class shareholders, the day two weeks prior to the day of the general meeting of class shareholders;
  - (iii) the day of the notice under the provisions of Article 144-15, paragraph (1) or the day of the public notice under the provisions of paragraph (2) of that Article, whichever comes earlier;
  - (iv) the day of the public notice under the provisions of Article 144-11, paragraph (2) as applied mutatis mutandis pursuant to Article 144-19 or the day of the demand under the provisions of Article 144-11, paragraph (2), whichever comes earlier.
- (2) The shareholder or creditor of an incorporated commodity exchange dissolved in a consolidation-type merger may make the following requests to the incorporated commodity exchange dissolved in a consolidation-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost specified by the incorporated commodity exchange dissolved in a

consolidation-type merger:

- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry, or a request to be issued a document that states the information.
- (3) If an incorporated commodity exchange dissolved in a consolidation-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

(Approval of a Consolidation-Type Merger Agreement)

- Article 144-14 (1) An incorporated commodity exchange dissolved in a consolidation-type merger must obtain approval for the consolidation-type merger agreement by a resolution of a shareholders meeting.
- (2) The resolution of a shareholders meeting referred to in the preceding paragraph must be adopted by at least a two-thirds majority (or, if a larger ratio is specified in the articles of incorporation, that ratio) of the votes of the shareholders present, at a meeting in which the shareholders holding the majority (or, if a ratio of one-third or more is specified in the articles of incorporation, at least that ratio) of the voting rights of shareholders that are able to exercise a voting right at the shareholders meeting are present. In such a case, in addition to the requirement for the resolution, the incorporated commodity exchange dissolved in a consolidation-type merger is not precluded from providing in its articles of incorporation that consent of a certain number or more of votes from the shareholders is required or other requirements.
- (3) Notwithstanding the provisions of the preceding paragraph, if the incorporated commodity exchange dissolved in a consolidation-type merger is a public company and the whole or a part of the shares in the incorporated commodity exchange incorporated in the consolidation-type merger that are to be delivered to shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger are shares with a restriction on transfer, a resolution of a shareholders meeting referred to in paragraph (1) (excluding a shareholders meeting of a company with class shares) must be made by the resolution prescribed in Article 309, paragraph (3) of the Companies Act.
- (4) If the incorporated commodity exchange dissolved in a consolidation-type merger is a company with class shares and the whole or a part of shares in the



incorporated commodity exchange established by a consolidation-type merger that are to be delivered to shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger are shares with restriction on transfer, the consolidation-type merger does not come into effect without a resolution of a general meeting of class shareholders consisting of the class shareholders of the class of shares (other than shares with a restriction on transfer) that is subject to the allotment of shares with restriction on transfer (or, if there are two or more classes of shares associated with those class shareholders, without the resolutions of each general meeting of class shareholders whose constituents are the class shareholders categorized by those two or more classes of shares); provided, however, that this does not apply if no shareholder is able to exercise a voting right at the general meeting of class shareholders.

- (5) The resolution of the general meeting of class shareholders referred to in the preceding paragraph must be adopted by a majority vote that constitutes at least two-thirds (or, if a higher ratio is specified in the articles of incorporation, that ratio) of the votes of more than half (or, if a higher ratio is specified in the articles of incorporation, at least that ratio) of the number of shareholders that are able to exercise voting rights at the general meeting of class shareholders.

(Notices to Shareholders)

Article 144-15 (1) The incorporated commodity exchange dissolved in a consolidation-type merger must notify its shareholders and registered pledgees of its shares (meaning registered pledgees of shares prescribed in Article 149, paragraph (1) of the Companies Act) as well as holders of its share options and registered pledgees of its share options (meaning registered pledgees of share options prescribed in Article 270, paragraph (1) of that Act) that the consolidation-type merger is to be implemented, and the name or trade name and address of the other commodity exchange dissolved in a consolidation-type merger and of the incorporated commodity exchange incorporated in a consolidation-type merger, within two weeks from the day of the resolution of the shareholders meeting referred to in paragraph (1) of the preceding Article.

- (2) Public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (3) The provisions of Article 940, paragraph (1) (limited to the part related to item (iv)) and paragraph (3) of the Companies Act apply *mutatis mutandis* if the incorporated commodity exchange dissolved in a consolidation-type merger issues the public notice referred to in the preceding paragraph by the means set forth in Article 939, paragraph (1), item (iii) of the Companies Act. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Demand to Refrain from Implementing a Consolidation-Type Merger)

Article 144-16 When an absorption-type merger is in violation of laws and regulations or the articles of incorporation and the shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger are likely to suffer disadvantages, the shareholders of the incorporated commodity exchange dissolved in a consolidation-type merger may demand the incorporated commodity exchange dissolved in an incorporation-type merger to refrain from implementing the absorption-type merger.

(Share Purchase Demand)

Article 144-17 (1) If a consolidation-type merger is to be implemented, the following shareholders may demand that an incorporated commodity exchange dissolved in a consolidation-type merger purchase their shares at a fair price:

- (i) a shareholder that has notified the incorporated commodity exchange dissolved in a consolidation-type merger that they are against the consolidation-type merger prior to the shareholders meeting (including a general meeting of class shareholders) to approve the consolidation-type merger agreement, and has dissented to the consolidation-type merger at the shareholders meeting (limited to a shareholder that is able to exercise a voting right at the shareholders meeting);
- (ii) a shareholder that is not able to exercise a voting right at the shareholders meeting.

(2) The provisions of Article 806, paragraphs (5) through (9), Article 807, Article 868, paragraph (1), Article 870, paragraph (2) (limited to the part related to item (ii)), Article 870-2, the main clause of Article 871, Article 872 (limited to the part related to item (v)), Article 872-2, the main clause of Article 873, Article 875, and Article 876 of the Companies Act apply mutatis mutandis to a demand under the provisions of the preceding paragraph. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Demand for Purchase of Share Options)

Article 144-18 (1) If a consolidation-type merger is to be implemented, the holder of a share option in the incorporated commodity exchange dissolved in a consolidation-type merger may demand that the incorporated commodity exchange dissolved in a consolidation-type merger purchase their share option at a fair price.

(2) The provisions of Article 808, paragraphs (5) through (10), Article 809, Article 868, paragraph (1), Article 870, paragraph (2) (limited to the part related to item (ii)), Article 870-2, the main clause of Article 871, Article 872 (limited to the part related to item (v)), Article 872-2, the main clause of Article 873,

Article 875, and Article 876 of the Companies Act apply mutatis mutandis to a demand under the provisions of the preceding paragraph. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Provisions to be Applied Mutatis Mutandis)

Article 144-19 The provisions of Article 144-11 apply mutatis mutandis to the incorporated commodity exchange dissolved in a consolidation-type merger.

### **Division 3 Procedures for the Incorporated Commodity Exchange Established by a Consolidation-Type Merger**

(Special Provisions on the Establishment of an Incorporated Commodity Exchange)

Article 144-20 (1) The provisions of Part II, Chapter I (excluding Article 27 (excluding items (iv) and (v)), Article 29, Article 31, Article 37, paragraph (3), Article 39, and Articles 47 through 49) of the Companies Act do not apply to the establishment of an incorporated commodity exchange established by a consolidation-type merger (limited to the incorporated commodity exchange established by a consolidation-type merger as a result of a consolidation-type merger between a member commodity exchange and a incorporated commodity exchange; hereinafter the same applies in this Division).

(2) The articles of incorporation of the incorporated commodity exchange established by a consolidation-type merger are prepared by the commodity exchanges dissolved in a consolidation-type merger.

(Keeping and Inspection of Documents Related to Consolidation-Type Merger Agreements)

Article 144-21 (1) An incorporated commodity exchange established by a consolidation-type merger must prepare documents or electronic or magnetic records that state or record the particulars of the rights and obligations of the commodity exchanges dissolved in a consolidation-type merger to which the incorporated commodity exchange incorporated in the consolidation-type merger will succeed as a result of the consolidation-type merger and other particulars specified by order of the competent ministry as being related to the consolidation-type merger, without delay after the day of its establishment.

(2) an incorporated commodity exchange established by a consolidation-type merger must keep the documents or electronic or magnetic records referred to in the preceding paragraph and documents or electronic or magnetic records that state or contain the content of the consolidation-type merger agreement and other particulars specified by order of the competent ministry at its head office, during the six-month period beginning from its establishment.

- (3) The shareholder or creditor of an incorporated commodity exchange established by a consolidation-type merger may make the following requests to the incorporated commodity exchange established by a consolidation-type merger at any time during its business hours; provided, however, that in making the request set forth in item (ii) or (iv), the shareholder or creditor must pay the cost specified by the incorporated commodity exchange established by a consolidation-type merger:
- (i) a request to inspect a document referred to in the preceding paragraph;
  - (ii) a request to be issued a certified copy or extract of a document referred to in the preceding paragraph;
  - (iii) a request to inspect a thing that displays the particulars that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by the means specified by order of the competent ministry;
  - (iv) a request to be provided with the information that has been recorded in an electronic or magnetic record referred to in the preceding paragraph by an electronic or magnetic means specified by order of the competent ministry or a request to be issued a document that states the information.
- (4) If an incorporated commodity exchange established by a consolidation-type merger has received a request under the provisions of the preceding paragraph, it must not refuse the request without legitimate grounds.

### **Subsection 6 Effectuation of Mergers**

(Authorization of Merger)

- Article 145 (1) A merger in which commodity exchanges constitute all or part of the parties (limited to a merger in which the person surviving the merger or the person established by the merger is a commodity exchange) does not come into effect without the authorization of the competent minister.
- (2) A person seeking the authorization referred to in the preceding paragraph must submit a written application stating the following particulars concerning the commodity exchange surviving the merger or the commodity exchange established by the merger (hereinafter referred to as the "commodity exchange resulting from a merger") (excluding the particulars set forth in item (ii), if the commodity exchange resulting from a merger is a member commodity exchange) to the competent minister:
- (i) their name or trade name
  - (ii) the amount of stated capital
  - (iii) the location of their offices or head office, the branch offices, and other business offices;
  - (iv) the listed commodity or listed commodity index;
  - (v) the names or trade names and addresses of the officers;

- (vi) the names or trade names of the members, etc. and the listed commodity or listed commodity index of the commodity market in which the members, etc. will trade.
- (3) Documents stating the content of the merger agreement, the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules for the commodity market resulting from a merger, and documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Criteria for Authorization)

Article 146 (1) If the competent minister finds that an application for the authorization referred to in paragraph (1) of the preceding Article conforms to the following criteria (excluding the criteria set forth in items (i) and (vi), if the commodity exchange resulting from a merger is a member commodity exchange), the minister must grant the authorization:

- (i) the amount of stated capital of the commodity exchange resulting from a merger is at least the amount specified by Cabinet Order as referred to in Article 80, paragraph (1), item (i);
- (ii) the volume of transactions is expected to be sufficient for ensuring fair and smooth futures transactions of the listed commodity or listed commodity index related to the application and in light of the status of transactions of the component products of listed commodities, etc., it is necessary and appropriate for the commodity exchange in which the futures transactions are conducted to survive the merger, or to establish a commodity exchange in which the futures transactions are to be conducted by the merger, in order to facilitate the production and distribution of the component products of listed commodities, etc.;
- (iii) if the applicant seeks to open a commodity market for a listed commodity, the situation conforms to the criteria specified by Cabinet Order as a situation in which it is appropriate for the component products of listed commodities to be traded on a single commodity market in light of the status of transactions of the persons conducting purchase and sales, etc. of component products of listed commodities in the course of trade, and in light of other circumstances of economic activities related to the component products of listed commodities;
- (iv) if the applicant seeks to open a commodity market with two or more commodity indices as a single listed commodity index, the majority of the goods or electric power underlying those two or more commodity indices are the same;
- (v) the provisions of the articles of incorporation, operational rules,

- entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules of the commodity exchange resulting from a merger do not violate laws and regulations, and the method or management of trade, qualification of members, etc., maximum number of members, etc. if it is specified, particulars of deposits if the obligation to deposit a special deposit is specified, and other particulars prescribed in the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules are appropriate and sufficient for ensuring the fairness of transactions in the commodity market and for protecting consignors;
- (vi) the commodity exchange resulting from a merger is to have a sufficient personnel structure to appropriately operate the commodity market;
  - (vii) the commodity exchange resulting from a merger is to be organized in a manner that conforms to the provisions of this Act as a commodity exchange;
  - (viii) it is fully expected that the commodity exchange resulting from a merger will smoothly and appropriately succeed to the business related to transactions in the commodity markets operated by the commodity exchanges that will disappear in the merger.
- (2) If an application for the authorization referred to in paragraph (1) of the preceding Article falls under one of the following items, the competent minister must not grant the authorization referred to in that paragraph notwithstanding the provisions of the preceding paragraph:
- (i) the commodity exchange resulting from a merger has a person falling under the person referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) as an officer;
  - (ii) the written application or documents that are required to be attached to the written application includes a false statement about a material particular.
- (3) If an application is filed for the authorization referred to in paragraph (1) of the preceding Article and the term of existence of the commodity exchange (for an incorporated commodity exchange, its term of existence as an incorporated commodity exchange) or the expiration date of the commodity market is stated or recorded in the articles of incorporation (for an incorporated commodity exchange, its operational rules), the criterion set forth in paragraph (1), item (ii) is replaced by the criteria that the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index which the application concerns, and that, in light of the status of transactions of the component products of listed commodities, etc., the commodity exchange in which the futures transactions are conducted to survive the merger, or a commodity exchange in which the futures transactions are conducted to be established by the merger does not and is not likely to cause significant hindrance to the production and

distribution of the component products of listed commodities, etc., and for the application of these criteria and the criteria referred to in items (iii) and (iv) of that paragraph, the competent minister is to make a judgment on those criteria for the term of existence or the term until the expiration date.

- (4) The provisions of Article 15, paragraphs (5) through (11) apply *mutatis mutandis* to the authorization referred to in paragraph (1) of the preceding Article. In such a case, the term "item (iii)" in Article 15, paragraph (10) is deemed to be replaced with "item (vi)".

(Registration of Absorption-type Mergers)

Article 147 (1) If a member commodity exchange has implemented an absorption-type merger and the commodity exchange surviving an absorption-type merger is a member commodity exchange, it must register the dissolution for the commodity exchange dissolved in an absorption-type merger and register the change for the commodity exchange surviving an absorption-type merger, within two weeks from the day on which the absorption-type merger comes into effect at the locality of the principal office, and within three weeks from that day at the locality of the secondary office; provided, however, that the registration of a change at the locality of the secondary office is to be made only if a particular set forth in one of the items of Article 24, paragraph (2) changes for the commodity exchange surviving an absorption-type merger.

- (2) If a member commodity exchange has implemented an absorption-type merger and the commodity exchange surviving an absorption-type merger is a incorporated commodity exchange, it must register the dissolution for the commodity exchange dissolved in an absorption-type merger and register the change for the commodity exchange surviving an absorption-type merger, within two weeks from the day on which the absorption-type merger comes into effect at the locality of the principal office and head office, and within three weeks from that day at the locality of the secondary office and branch offices; provided, however, that the registration of the change at the locality of branch offices is to be made only if a particular set forth in one of the items of Article 930, paragraph (2) of the Companies Act changes for the commodity exchange surviving an absorption-type merger.

(Registration of Consolidation-Type Mergers)

Article 147-2 (1) If a member commodity exchange is to implement a consolidation-type merger and the commodity exchange established by a consolidation-type merger is a member commodity exchange, it must register the dissolution for the commodity exchange dissolved in a consolidation-type merger and register the establishment for the commodity exchange established by a consolidation-type merger, within two weeks from whichever of the

following days is the latest at the locality of the principal office, and within three weeks from that day at the locality of the secondary office. With regard to the application of Article 20, paragraph (2) in such a case, the phrase "referred to in the preceding paragraph" in that paragraph is deemed to be replaced with "for the establishment of the commodity exchange established by a consolidation-type merger":

- (i) the day of the resolution of a general meeting of members referred to Article 144-3, paragraph (4)
  - (ii) the day that the procedure under the provisions of Article 124 as applied *mutatis mutandis* pursuant to Article 144-3, paragraph (6) has been completed;
  - (iii) the day the commodity exchanges dissolved in a consolidation-type merger has decided through an agreement;
  - (iv) the day that the authorization referred to in Article 145, paragraph (1) has been obtained.
- (2) If a member commodity exchange is to implement a consolidation-type merger and the commodity exchange established by the consolidation-type merger is a incorporated commodity exchange, it must register the dissolution for the commodity exchange dissolved in the consolidation-type merger and register the establishment for the commodity exchange established by a consolidation-type merger, within two weeks from whichever of the following days is the latest at the locality of the principal office and head office, and within three weeks from that day at the locality of the secondary office and branch offices:
- (i) the day of the resolution of a shareholders meeting referred to in Article 144-14, paragraph (1);
  - (ii) if a resolution of a general meeting of class shareholders is required for a consolidation-type merger, the day of that resolution;
  - (iii) the day on which 20 days have elapsed since the day the notice under the provisions of Article 144-15, paragraph (1) has been made or the day the public notice referred to in paragraph (2) of that Article has been given;
  - (iv) the day on which the procedure referred to in Article 144-11 as applied *mutatis mutandis* pursuant to Article 144-19 has been completed; or
  - (v) the days set forth in the items of the preceding paragraph.

(Coming into Effect of a Merger)

Article 148 (1) A commodity exchange surviving an absorption-type merger succeeds to the rights and obligations of a commodity exchange dissolved in an absorption-type merger (including rights and obligations that are based on permission, license, authorization, or any other disposition by an administrative agency in relation to the business conducted by the commodity exchange; the same applies in paragraph (3)) on the effective date or on the day



it obtains the authorization of the competent minister referred to in Article 145, paragraph (1), whichever is later.

- (2) The dissolution of the commodity exchange dissolved in an absorption-type merger as a result of an absorption-type merger may not be asserted against a third party until after the absorption-type merger has been registered.
- (3) A commodity exchange established in a consolidation-type merger succeeds to the rights and obligations of the commodity exchanges dissolved in a consolidation-type merger on the day of its establishment.
- (4) In the cases prescribed in the provisions set forth in the following items, the member of a member commodity exchange dissolved in an absorption-type merger or a member commodity exchange dissolved in a consolidation-type merger, or the shareholder of a incorporated commodity exchange dissolved in a consolidation-type merger becomes a shareholder of the shares under the provisions set forth in each of the following item in accordance with the provisions with regard to the particulars set forth in each item, on the day on which the absorption-type merger comes into effect or the day of the establishment of the incorporated commodity exchange established in a consolidation-type merger:
  - (i) the provisions of Article 142, item (ii), (a): the particulars set forth in item (iii) of that Article; or
  - (ii) the provisions of Article 143, paragraph (1), item (vi): the particulars set forth in item (vii) of that paragraph.
- (5) A share option in an incorporated commodity exchange dissolved in a consolidation-type merger extinguishes on the day of the establishment of the incorporated commodity exchange established by a consolidation-type merger.

Article 149 (1) An entity that is established by obtaining the authorization referred to in Article 145, paragraph (1) is deemed to have obtained the permission referred to in Article 9 or the license referred to in Article 78 at the time of the establishment.

- (2) If there are transactions that have been closed on the commodity market of a commodity exchange dissolved in an absorption-type merger or commodity exchange dissolved in a consolidation-type merger, whose settlement has not been completed, unless the commodity exchange resulting from a merger opens a commodity market that is the same as the commodity market related to those transactions (including the same type of commodity market specified by Cabinet Order), the commodity exchange resulting from a merger must open a commodity market that is the same as that of the commodity exchange dissolved in an absorption-type merger or commodity exchange dissolved in a consolidation-type merger, to the extent required to complete the settlement of those transactions.

- (3) The provisions of Article 5, paragraph (1) do not apply if the commodity exchange resulting from a merger opens a commodity market pursuant to the provisions of the preceding paragraph.
- (4) Transactions that have been closed on the commodity market of the commodity exchange dissolved in an absorption-type merger or commodity exchange dissolved in a consolidation-type merger, and whose settlement has not been completed, are deemed to be transactions that have been closed on the same commodity market as that of the commodity exchange resulting from a merger (including the same type of commodity market specified by Cabinet Order) under the same conditions.

(Treatment of Fractions)

Article 150 The provisions of Article 234, paragraphs (1) through (5), Article 868, paragraph (1), Article 869, Article 871, Article 874 (limited to the part related to item (iv)), Article 875, and Article 876 of the Companies Act apply *mutatis mutandis* to the absorption-type merger referred to in Article 142 and the consolidation-type merger referred to in Article 143, paragraph (1). In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Submission of Share Certificates)

Article 151 (1) The provisions of Article 219, paragraph (1) (limited to the part related to item (vi)), paragraph (2) (limited to the part related to item (iv)), and paragraph (3), Article 220, Article 293, paragraph (1) (limited to the part related to item (iii)) and paragraph (2) (limited to the part related to item (iv)), paragraph (3) and paragraph (5) of the Companies Act apply *mutatis mutandis* to the incorporated commodity exchange dissolved in a consolidation-type merger. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 940, paragraph (1) (limited to the part related to item (i)) and paragraph (3) of the Companies Act apply *mutatis mutandis* if an incorporated commodity exchange dissolved in a consolidation-type merger issues the public notice under the provisions of Article 219, paragraph (1) or Article 293, paragraph (1) of that Act as applied *mutatis mutandis* pursuant to the preceding paragraph by the means set forth in Article 939, paragraph (1), item (iii) of that Act; the provisions of Article 940, paragraph (1) (limited to the part related to item (iii)) and paragraph (3) apply *mutatis mutandis* if an incorporated commodity exchange dissolved in a consolidation-type merger issues the public notice under the provisions of Article 220, paragraph (1) of that Act (including as applied *mutatis mutandis* pursuant to Article 293, paragraph (5) of that Act, as applied *mutatis mutandis* pursuant to the

preceding paragraph) as applied mutatis mutandis pursuant to the preceding paragraph by the means set forth in Article 939, paragraph (1), item (iii) of that Act. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

- (3) The provisions of Article 154, paragraph (2) (limited to the part related to item (iii)) and Article 272, paragraph (3) (limited to the part related to item (iii)) of the Companies Act apply mutatis mutandis to an incorporated commodity exchange established by a consolidated-type merger. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Application, Mutatis Mutandis of the Commercial Registration Act)

Article 152 (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 apply mutatis mutandis to the registration of a member commodity exchange as the result of a merger in a case set forth in Article 139, paragraph (2), item (i). In such a case, the phrase "trade name and the head office" in Article 79 of that Act is deemed to be replaced with "name and the principal office"; the term "amount of stated capital" in Article 80, item (iv) of that Act is deemed to be replaced with "total amount of contribution"; the term "head office" in item (v) of that Article and Article 81, item (v) of that Act is deemed to be replaced with "office"; the phrase "when a company dissolved in an absorption-type merger is a membership company, a document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedures under those provisions)" in Article 80, item (vii) of that Act is deemed to be replaced with "minutes of the general meeting of members regarding the merger of the member commodity exchange implementing the absorption-type merger"; the term "the following documents" in Article 81 of that Act is deemed to be replaced with "the following documents and a document proving the qualification of the person with the authority of representation"; the phrase "when a company dissolved in an incorporation-type merger is a membership company, a document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedure under such provisions)" in item (vii) of that Article is deemed to be replaced with "minutes of the general meeting regarding the merger of the member commodity exchange dissolved in a consolidation-type merger"; the term "the head office" in Article 82, paragraphs (2) through (4) and Article 83 of that Act is deemed to be replaced with "the principal office"; any other necessary technical replacement of terms is specified by Cabinet Order.

- (2) The provisions of Article 79, Article 80 (excluding items (vi), (ix), and (x)), and Articles 81 through 83 of the Commercial Registration Act apply mutatis

mutandis to the registration of a member commodity exchange or incorporated commodity exchange as the result of a merger in a case set forth in Article 139, paragraph (2), item (ii). In such a case, the phrase "trade name and the head office" in Article 79 of that Act is deemed to be replaced with "name and the principal office or the head office"; the term "head office" in Article 80, item (v) of that Act is deemed to be replaced with "office"; the phrase "when a company dissolved in an absorption-type merger is a membership company, a document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedure under those provisions)" in item (vii) of that Article is deemed to be replaced with "the minutes of the general meeting of members regarding the merger of the member commodity exchange surviving an absorption-type merger"; the term "head office" in Article 81, item (v) of that Act is deemed to be replaced with "head office or office"; the phrase "when a company dissolved in an incorporation-type merger is a membership company, a document proving the consent of all members (if special provisions exist in the articles of incorporation, the procedure under those provisions)" in item (vii) of that Article is deemed to be replaced with "the minutes of the general meeting of members regarding the merger of the member commodity exchange dissolved in a consolidation-type merger"; any other necessary technical replacement of terms is specified by Cabinet Order.

(Action to Invalidate a Merger)

Article 153 The provisions of Article 828, paragraph (1) (limited to the part related to item (vii) and item (viii)) and paragraph (2) (limited to the part related to item (vii) and item (viii)), Article 834 (limited to the part related to item (vii) and item (viii)), Article 835, paragraph (1), Articles 836 through 839, 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 part related to item (ii) and item (iii)) and paragraph (4) of the Companies Act apply mutatis mutandis to an action to invalidate a merger referred to in Article 139, paragraph (1); the provisions of Article 868, paragraph (6), Article 870, paragraph (2) (limited to the part related to item (vi)), Article 870-2, the main clause of Article 871, Article 872 (limited to the part related to item (v)), Article 872-2, the main clause of Article 873, Article 875, and Article 876 of that Act apply mutatis mutandis to a petition referred to in Article 843, paragraph (4) of that Act as applied mutatis mutandis pursuant to this Article. In such a case, the phrase "the head office of each company" in Article 937, paragraph (3) of that Act is deemed to be replaced with "the head office of each incorporated commodity exchange or the principal office of each member commodity exchange"; the phrase "the respective items of Article 930, paragraph (2)" in paragraph (4) of that Article is deemed to be replaced with

"the items of Article 930, paragraph (2) of the Companies Act or the items of Article 24, paragraph (2) of the Commodity Derivatives Transaction Act" and the phrase "the branch offices of each company" in that paragraph is deemed to be replaced with "the branch offices of each incorporated commodity exchange or the secondary offices of each member commodity exchange".

(Delegation to Cabinet Order)

Article 154 (1) Beyond what is provided for in this Act, necessary particulars for the merger of commodity exchanges are specified by Cabinet Order.

(2) The amount that is required to be reported as capital reserves at the time of a merger and other necessary particulars for the calculation at the time of a merger are specified by order of the competent ministry.

### **Section 7 Supervision**

(Changes to the Articles of Incorporation)

Article 155 (1) Changes to the articles of incorporation of a commodity exchange does not come into effect without the authorization of the competent minister.

(2) If a commodity exchange seeks the authorization referred to in the preceding paragraph, it must submit a written application by attaching the documents specified by order of the competent ministry to the competent minister.

(3) If an application is filed by a member commodity exchange for the authorization referred to in paragraph (1) and the competent minister finds the application to conform to the criteria prescribed in each of the following items in accordance with the category set forth in that item, the minister must grant the authorization:

(i) an application concerning the operation of a commodity market (other than what is set forth in the following item): the following criteria:

(a) the total number of members of the member commodity exchange seeking to open the commodity market who seek to trade on that commodity market, and the persons that seek to become members of the member commodity exchange and trade on the commodity market (limited to those that have finished paying the full amount of their contribution) is 20 or more and the majority of them are persons specified in the items of Article 10, paragraph (2);

(b) the criteria set forth in Article 15, paragraph (1), items (i) through (iv);

(ii) an application concerning the opening of a fixed-term commodity market (meaning the commodity market of a member commodity exchange whose term of existence is stated or recorded in the articles of incorporation, or a commodity market whose expiration date is stated or recorded in the articles of incorporation; hereinafter the same applies in this Article): the following

- criteria:
- (a) the criteria set forth in (a) of the preceding item;
  - (b) the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index that the application concerns, and in light of the status of transactions of the component products of listed commodities, etc., opening a commodity market in which the futures transactions are conducted does not and is not likely to significantly hinder the production or distribution of the component products of listed commodities, etc.;
  - (c) the criteria set forth in Article 15, paragraph (1), items (ii) through (iv);
  - (iii) an application concerning a change of scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of a commodity market (excluding a fixed-term commodity market) or the abolition of the term of existence of a member commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the criteria set forth in Article 15, paragraph (1), items (i) through (iv);
  - (iv) an application concerning a change of scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of a commodity market (excluding a fixed-term commodity market), or a change of scope of a listed commodity or a listed commodity index on a fixed-term commodity market, or to a change of the term of existence of a member commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the following criteria:
    - (a) the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index which the application concerns, and, in light of the status of transactions of the component products of listed commodities, etc., the change of scope of a listed commodity or a listed commodity index or the change of the term of existence of the member commodity exchange, the expiration date of the commodity market, or the change of the term for a change of scope does not and is not likely to cause significant hindrance to the production or distribution of the component products of listed commodities, etc.;
    - (b) the criteria set forth in Article 15, paragraph (1), items (ii) through (iv);
  - (v) beyond what is set forth in the preceding items: the criteria set forth in Article 15, paragraph (1), item (iv).
- (4) If an application is filed by an incorporated commodity exchange for the authorization under paragraph (1) and the competent minister finds that the application conforms to the criteria set forth in Article 80, paragraph (1), item (vi), the minister must grant the authorization.
- (5) Before granting the authorization referred to in paragraph (1) to a member

- commodity exchange, the competent minister is to apply the criteria set forth in paragraph (3), item (ii), (b) and (c) (excluding the part related to Article 15, paragraph (1), item (iv)) and paragraph (3), item (iv), (a) and (b) (excluding the part related to paragraph (1), item (iv) of that Article) to make a judgment for the term of existence of the member commodity exchange, the term until the expiration date of the commodity market, or the term for a change of scope.
- (6) The provisions prescribed in the following items apply mutatis mutandis to the authorization referred to in paragraph (1) for a member commodity exchange, with regard to the particular set forth in the relevant item:
- (i) the opening of a commodity market, a change to a particular set forth in Article 11, paragraph (2), item (xiii) for a commodity market (other than what is set forth in the following item), the abolition of the term of existence of a member commodity exchange, the expiration date of a commodity market, or the term for a change of scope, or the establishment of, a change to, or the abolition of the maximum number of members: the provisions of Article 15, paragraphs (5) through(9);
  - (ii) a change of scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of a commodity market (excluding a fixed-term commodity market), the opening of a fixed-term commodity market, or a change of scope of a listed commodity or a listed commodity index of a fixed-term commodity market, or a change in the term of existence of a member commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the provisions of Article 15, paragraphs (5) through (11).
- (7) In granting the authorization referred to in paragraph (1) related to the abolition of the term of existence of a member commodity exchange, the expiration date of a commodity market, or the term for a change of scope, the competent minister must take into consideration the status of transactions in the member commodity exchange or the commodity market during the period that the authorization is being considered.
- (8) If an application for the authorization referred to in paragraph (1) is related to a change of scope of a listed commodity or listed commodity index, the competent minister must not grant the authorization referred to in that paragraph until after three months have elapsed since the day of the public notice under the provisions of Article 352 (limited to the part related to item (viii)).

(Changes to the Operational Rules, Entrustment Contract Regulations, Dispute Resolution Rules, or Market Transactions Surveillance Committee Rules)

Article 156 (1) A change to the operational rules, entrustment contract

regulations, dispute resolution rules, or market transactions surveillance committee rules of a commodity exchange does not come into effect without the authorization of the competent minister; provided, however, that this does not apply to minor changes to the operational rules provided for by order of the competent ministry.

- (2) If a commodity exchange seeks the authorization referred to in the preceding paragraph, it must submit a written application by attaching the documents specified by order of the competent ministry to the competent minister.
- (3) If a commodity market makes a minor change provided for by order of the competent ministry which is referred to in the proviso to paragraph (1), it must notify the competent minister of this without delay.
- (4) If the competent minister finds that an application for the authorization referred to in paragraph (1) (excluding one related to the operational rules of an incorporated commodity exchange) conforms to the criteria prescribed in each of the following items in accordance with the category set forth in that item, the minister must grant the authorization:
  - (i) an application concerning a member commodity exchange: the criteria set forth in Article 15, paragraph (1), item (iv); and
  - (ii) an application concerning an incorporated commodity exchange: the criteria set forth in Article 80, paragraph (1), item (vi).
- (5) If the competent minister finds that an application for the authorization referred to in paragraph (1) related to the operational rules of an incorporated commodity exchange conforms to the criteria prescribed in each of the following items in accordance with the category set forth in that item, the minister must grant the authorization:
  - (i) an application concerning the opening of a commodity market (other than what is set forth in the following item): the criteria set forth in Article 80, paragraph (1), items (ii) through (vi);
  - (ii) an application concerning the opening of a fixed-term commodity market (meaning the commodity market of an incorporated commodity exchange whose term of existence is stated or recorded in its operational rules, or a commodity market whose expiration date is stated or recorded in its operational rules; hereinafter the same applies in this Article): the following criteria:
    - (a) the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index that the application concerns, and, in light of the status of transactions of the component products of listed commodities, etc., the opening of a commodity market in which the futures transactions are conducted does not and is not likely to cause significant hindrance to the production or distribution of the component products of listed commodities,



- etc.;
- (b) the criteria set forth in Article 80, paragraph (1), item (ii) and items (iv) through (vi).
  - (iii) an application that concerns a change in the scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of a commodity market (excluding a fixed-term commodity market), or the abolition of the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the criteria set forth in Article 80, paragraph (1), items (iii) through (vi);
  - (iv) an application that concerns a change in the scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of the commodity market (excluding a fixed-term commodity market), a change in the scope of a listed commodity or listed commodity index on a fixed-term commodity market, or a change of the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the following criteria:
    - (a) the volume of transactions is not expected to fall short in terms of ensuring fair and smooth futures transactions in the listed commodity or listed commodity index that the application concerns, and, in light of the status of transactions of the component products of listed commodities, etc., the change in the scope of the listed commodity or listed commodity index, the change in the term of existence as an incorporated commodity exchange in which the futures transactions are conducted, the change in the expiration date of the commodity market, or the change in the term for a change of scope does not and is not likely to cause significant hindrance to the production or distribution of the component products of listed commodities, etc.;
    - (b) the criteria set forth in Article 80, paragraph (1), items (iv) through (vi).
  - (v) an application other than one set forth in the preceding items: the criteria set forth in Article 80, paragraph (1), item (vi).
- (6) If an application for the authorization referred to in paragraph (1) concerns the operational rules of an incorporated commodity exchange, the competent minister is to apply the criteria set forth in item (ii), (a) and (b) of the preceding paragraph (excluding the part related to Article 80, paragraph (1), items (ii) and (vi)) and item (iv), (a) and (b) of the preceding paragraph (excluding the part related to paragraph (1), item (vi) of that Article) to make a judgment for the term of existence as an incorporated commodity exchange, the term until the end of the expiration date of the commodity market, or the term for a change of scope.
- (7) If the authorization referred to in paragraph (1) concerns the operational

rules of an incorporated commodity exchange, the provisions prescribed in the following items apply mutatis mutandis to the particular set forth in each item:

- (i) the opening of a commodity market, a change to a particular set forth in Article 102, paragraph (1), item (iv), (v), or (x) with regard to a commodity market (other than what is set forth in the following item), the abolition of the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope, or the establishment of, a change to, or the abolition of the maximum number of trading participants of an incorporated commodity exchange: the provisions of Article 15, paragraphs (5) through (9);
  - (ii) a change of scope of a listed commodity or listed commodity index (limited to those for which the term for a change of scope is specified) of a commodity market (excluding a fixed-term commodity market), the operation of a fixed-term commodity market, a change of scope of a listed commodity or listed commodity index of a fixed-term commodity market, or a change in the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope: the provisions of Article 15, paragraphs (5) through (11).
- (8) In granting the authorization referred to in paragraph (1) related to the abolition of the term of existence as an incorporated commodity exchange, the expiration date of a commodity market, or the term for a change of scope, the competent minister must take into consideration the status of transactions in the incorporated commodity exchange or the commodity market during the period that the authorization is being considered.
- (9) If an application for the authorization referred to in paragraph (1) concerns a change of scope of the listed commodity or listed commodity index of an incorporated commodity exchange, the competent minister must not grant the authorization referred to in that paragraph until after three months have elapsed since the day of the public notice under the provisions of Article 352 (limited to the part related to item (viii)).

(Collection of Reports and On-site Inspections)

Article 157 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a commodity exchange, its subsidiary company, or its member, etc. to submit reports or materials that should serve as a reference on its business or assets, or may have a ministry official enter into the office or business office of a commodity exchange, its subsidiary company, or its member, etc. and inspect its books and documents or any other article related to its business.

(2) If an on-site inspection is conducted pursuant to the provisions of the

preceding paragraph and a ministerial official finds it to be necessary in order to achieve the purpose of the inspection, to inspect a listed commodity that the member, etc. owns or that has been deposited with the member, etc., and is retained at a place other than the member's, etc. office or business office, the official may have the member, etc. present a document certifying the retention of the listed commodity to the manager of that place, and may enter that place and inspect the listed commodity in the presence of the member, etc.

- (3) If an inspection is conducted pursuant to the provisions of paragraph (1), and the member, etc. is a member, etc. of a commodity market regarding a listed commodity including electric power that is a commodity or related to a listed commodity index including commodity index covering electric power that is a commodity, to achieve the purpose of the inspection, the ministerial official may enter an office or a business office of a person who holds the majority of voting rights of the member, etc. that is a stock company, a subsidiary of the member, etc., or other persons specified by Cabinet Order as having a close relationship with the member, etc., and inspect its books, documents and any other article related to futures transactions of electric power in the presence of the member, etc.
- (4) An official conducting an on-site inspection pursuant to the provisions of the preceding three paragraphs must carry an identification card and present it to the persons concerned.
- (5) The authority for an on-site inspection under the provisions of paragraphs (1) through (3) must not be construed as being granted for criminal investigation purpose.

#### (Business Improvement Orders)

Article 158 (1) If the competent minister finds it to be necessary and appropriate for ensuring the principle of good faith in transactions or for the protection of entrustors in relation to the business operations of a commodity exchange, the minister may, to the extent necessary, order the commodity exchange to change its articles of incorporation and other rules, to change its business methods, or to take other measures necessary for improving its business operations.

- (2) If the competent minister seeks to issue an order under the provisions of the preceding paragraph and finds it to be necessary, the minister may ask a witness to appear and hear their opinion, ask a witness to submit an opinion or report, or ask an expert to appear and have them give an expert opinion.

#### (Supervisory Dispositions on Commodity Exchanges)

Article 159 (1) If a commodity exchange falls under one of the following items and the competent minister finds it to be necessary and appropriate for ensuring the public interest or the principle of good faith in transactions or for

the protection of consignors, the minister may render the disposition set forth in each item on the commodity exchange:

- (i) if the commodity exchange violates this Act, etc., a condition attached to the authorization referred to in the proviso to Article 3, paragraph (1) or Article 3-2, or its articles of incorporation or other rules, or even though a member, etc. violates this Act, etc. or the articles of incorporation or other rules of the commodity exchange, the commodity exchange fails to exercise the powers authorized under this Act, an order based on this Act, or its articles of incorporation or other rules, or fails to take other necessary measures to have the member, etc. observe this Act, etc., its articles of incorporation, or other rules: to revoke the permission referred to in Article 9 or the license referred to in Article 78, or order the suspension of all or a part of its business for a fixed period not exceeding one year;
- (ii) if the commodity exchange does not open all or some of its commodity markets within three months from the day on which it is permitted to open the commodity markets without legitimate grounds for doing so, if it suspends futures transactions (limited to those related to the transactions set forth in Article 2, paragraph (3), item (i) or (ii) in the case of a commodity market for a listed commodity, and limited to those related to the transactions set forth in item (iii) of that paragraph in the case of a commodity market for a listed commodity index; hereinafter the same applies in this item) on all or some of its commodity markets for three months or longer, or the futures transactions on all or some of its commodity markets no longer conform to the criteria set forth in Article 15, paragraph (1), item (i) or Article 80, paragraph (1), item (iii): to revoke the permission referred to in Article 9, the license referred to in Article 78, or the authorization to change the articles of incorporation;
- (iii) if the competent minister finds the acts of the commodity exchange or the status of transactions in a commodity market it operates to be harmful to the public interest: to order the suspension of all or a part of its business for a fixed period not exceeding three months;
- (iv) if the competent minister finds that the business that a commodity exchange conducts under the authorization obtained pursuant to the proviso to Article 3, paragraph (1) is likely to impair confidence in the public nature of the business of the commodity exchange or the sound and appropriate operation of the business of opening a commodity market and business incidental thereto, or the commodity exchange has violated the conditions attached to the authorization referred to in the proviso to that paragraph: to revoke the authorization referred to in the proviso to that paragraph;
- (v) if, in spite of the fact that the acts of a subsidiary company owned by the commodity exchange with the authorization obtained pursuant to the proviso

to Article 3-2, paragraph (1) is likely to impair confidence in the public nature of the business of the commodity exchange or the sound and appropriate operation of the business of opening a commodity market and business incidental thereto, the commodity exchange fails to take the necessary measures for correcting the acts, or the commodity exchange has violated the conditions attached to the authorization referred to in the proviso to that paragraph: to revoke the authorization referred to in the proviso to that paragraph.

- (2) If the competent minister discovers that the written application for the permission referred to in Article 9, the license referred to in Article 78, the authorization referred to in Article 155, paragraph (1) or Article 156, paragraph (1), or a document that is attached to these documents contains a false statement about a material particular or lacks a statement of material fact, the minister may revoke that permission, license, or authorization or order a commodity exchange to change the part of its articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, or market transactions surveillance committee rules concerning the material particular.
- (3) If the competent minister discovers that a person has become the officer of a commodity exchange by wrongful means or if the officer of a commodity exchange has violated this Act, etc., the minister may order the commodity exchange to dismiss that officer.
- (4) The proceedings on the date for a hearing on the revocation of permission, license, or authorization, or the order to dismiss an officer under the provisions of the preceding three paragraphs must be opened to the public; provided, however, that this does not apply if the competent minister finds it to be necessary to maintain the confidential information of the business of the person that is to become subject to the disposition secret or finds it to be necessary in the public interest.
- (5) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to a disposition under the provisions of paragraph (1) through (3).
- (6) No review may be requested against a disposition under the provisions of paragraph (1), item (iii).

(Supervisory Dispositions on Members)

Article 160 (1) If a member or a trading participant violates this Act etc., the competent minister may order the commodity exchange to expel the member or revoke the trading participant's trading qualification for a fixed period not exceeding six months, or to suspend the member's or trading participant's transactions in commodity markets or the entrustment of the member's or trading participant's commodity clearing transactions, or, if the violation is

related to the officer of a member or trading participant that is a corporation, the minister may order the member or trading participant to dismiss the officer that has committed the violation.

(2) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of the preceding paragraph and the provisions of paragraph (4) of the preceding Article apply mutatis mutandis to the hearing on an order to expel a member, to revoke the trading qualification of a trading participant, or to dismiss an officer, under the provisions of the preceding paragraph.

## **Section 8 Miscellaneous Provisions**

(Duty of Confidentiality of the Officers and Employees of a Commodity Exchange)

Article 161 It is prohibited for the officer (or, if the officer is a corporation, a person that is to perform the duties of the officer) or employee of a commodity exchange, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.

(Period for Registration)

Article 162 The period for registration of the particulars that are required to be registered which require the permission or authorization of the competent minister begins from the day of arrival of the written permission or written authorization.

Article 163 Deleted

(Effect of Registration)

Article 164 A particular that is required to be registered pursuant to the provisions of this Act may not be asserted against a third party until after it is registered.

(Sanction Rules)

Article 165 A commodity exchange must specify in its articles of incorporation that if a member or a trading participant violates this Act, etc. or the articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, or other rules of the commodity exchange, or if such a person performs an act that is contrary to the principle of good faith in transactions, the commodity exchange will impose a monetary sanction on the member or trading participant, suspend or restrict of all or a part of its transactions in the commodity markets or its entrustment of commodity clearing transactions

related to the commodity exchange, or expel the member or revoke the trading participant's trading qualification.

(Market Transactions Surveillance Committee)

Article 166 (1) A commodity exchange must specify in the market transactions surveillance committee rules that it will establish a market transactions surveillance committee (hereinafter referred to as a "committee" in this Article) comprised of committee members with relevant expertise on transactions in a commodity market and who satisfy the requirements specified by order of the competent ministry, for the purpose of ensuring the fairness of transactions in the commodity market.

(2) A committee may state its opinion to the president or the representative director (or the representative executive officer, for a company with nominating committee, etc.) concerning the method or management of transactions in a commodity market and the operation of the business of the commodity exchange.

(3) A commodity exchange must specify the particulars of the organization and authority of the committee and the other particulars specified by order of the competent ministry in its market transactions surveillance committee rules.

### **Chapter III Commodity Clearing Organizations**

#### **Section 1 Commodity Clearing Organizations**

(License)

Article 167 Business of assuming commodity transaction debts may only be operated by a stock company that has obtained a license from the competent minister.

(Application for a License)

Article 168 (1) A person seeking the license referred to in the preceding Article must submit a written application stating the following particulars to the competent minister:

(i) the trade name;

(ii) the amount of stated capital;

(iii) the location of its head office, branch offices, and any other business office;

(iv) the commodity markets in which transactions that give rise to obligations subject to the business of assuming commodity transaction debts are to be conducted; and

(v) the names or trade names and addresses of the officers.

(2) The articles of incorporation, operational method statement, and documents specified by order of the competent ministry must be attached to the written

application referred to in the preceding paragraph.

(Licensing Criteria)

Article 169 (1) If the competent minister finds that an application for the license referred to in Article 167 conforms to the following criteria, the minister must grant the license:

- (i) the license applicant is a stock company;
  - (ii) the provisions of the articles of incorporation and the operational method statement do not violate laws and regulations and are sufficient for the proper and secure execution of business of assuming commodity transaction debts;
  - (iii) the license applicant has a sufficient financial basis to soundly execute business of assuming commodity transaction debts, and has good prospects in terms of expected income and expenditures in connection with the business of assuming commodity transaction debts;
  - (iv) the license applicant has the knowledge and experience to properly and securely execute business of assuming commodity transaction debts, and also has sufficient social credibility.
- (2) Notwithstanding the provisions of the preceding paragraph, if an application for the license referred to in Article 167 falls under one of the following items, the competent minister must not grant the license referred to in that Article:
- (i) the license applicant is a person that falls under a person referred to in Article 15, paragraph (2), item (i), sub-items (c) through (e), sub-item (i), or sub-item (l);
  - (ii) the written application or documents that are required to be attached to the written application contain a false statement about a material particular.
- (3) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the license referred to in Article 167.

(Scope of Business)

Article 170 (1) A commodity clearing organization may engage in the business of assuming obligations arising from over-the-counter commodity derivatives transactions for a clearing participant, pursuant to the provisions of the operational method statement.

- (2) A commodity clearing organization (excluding the case in which the commodity clearing organization is a commodity exchange; hereinafter the same applies from this Article through Article 172) may not engage in any business other than the business of assuming commodity transaction debts and the business referred to in the preceding paragraph (hereinafter referred to as "business of assuming commodity transaction debts, etc."), and other business incidental to them; provided, however, that this does not apply if a commodity



clearing organization has obtained the approval of the competent minister for financial instruments obligation assumption services, etc. or other business related to business of assuming commodity transaction debts pursuant to the provisions of order of the competent ministry, which is found to involve no risk of hindering the commodity clearing organization to properly and securely engage in the business of assuming commodity transaction debts.

- (3) If a commodity clearing organization discontinues the business for which it has obtained the approval referred to in the proviso to the preceding paragraph, it must notify the competent minister of this pursuant to the provisions of order of the competent ministry.
- (4) The competent minister may attach conditions to the approval referred to in the proviso to paragraph (2).
- (5) The conditions referred to in the preceding paragraph must be the minimum necessary ensure the public interest and the protection of entrustors.

#### (Notification of Changes)

Article 171 If a particular set forth in Article 168, paragraph (1), item (ii), item (iii), or item (v) changes (excluding the location of the head office), the commodity clearing organization must submit a notification indicating this to the competent minister by attaching the documents specified by order of the competent ministry, pursuant to the provisions of order of the competent ministry.

#### (Disqualifying Conditions for Officers)

Article 172 The provisions of Article 49 apply mutatis mutandis to the officers of a commodity clearing organization.

#### (Business of Assuming Commodity Transaction Debts by a Commodity Exchange)

Article 173 (1) Notwithstanding the provisions of Article 3, paragraph (1) and Article 167, a commodity exchange may engage in the business of assuming commodity transaction debts, etc. and business incidental thereto with the approval of the competent minister, pursuant to the provisions of order of the competent ministry.

- (2) A commodity exchange that seeks to obtain the approval referred to in the preceding paragraph must submit a written application stating the following particulars to the competent minister:
  - (i) the name or trade name; and
  - (ii) the commodity markets in which transactions that give rise to obligations subject to the business of assuming commodity transaction debts are to be conducted.

- (3) The operational method statement and the documents specified by order of the competent ministry must accompany the written application referred to in the preceding paragraph.
- (4) The provisions of Article 169, paragraph (1) (excluding the part that involves item (i)), paragraph (2) (limited to the part that involves item (ii)), and paragraph (3) applies mutatis mutandis to the approval referred to in paragraph (1).

(Clearing Participants)

Article 174 (1) A commodity clearing organization, pursuant to the provisions of its operational method statement, may grant a person that satisfies the requirements specified by the operational method statement the qualification to become the counterparty to the business of assuming commodity transaction debts that the commodity clearing organization conducts.

- (2) If a clearing participant no longer satisfies the requirements for the amount of net assets specified in the operational method statement, the commodity clearing organization, pursuant to the provisions of the operational method statement, must stop assuming obligations with the clearing participant as the counterparty or revoke the clearing member's qualification as a clearing participant.

(Operational Business Statement)

Article 175 (1) A commodity clearing organization must conduct its business pursuant to its operational business statement.

- (2) The following particulars must be specified in the operational business statement:
  - (i) if the commodity clearing organization engages in the business referred to in Article 170, paragraph (1), an indication of this;
  - (ii) the commodity markets in which transactions that give rise to obligations subject to the business of commodity transaction debts are to be conducted;
  - (iii) the particulars of the requirements for clearing participants (including those concerning the amount of net assets of a clearing participant);
  - (iv) the particulars of the assumption and performance of obligations carried out as business of assuming commodity transaction debts (or business of assuming commodity transaction debts, etc., if the commodity clearing organization engages in business referred to in Article 170, paragraph (1); the same applies in Article 178);
  - (v) the particulars involved in ensuring the performance of obligations by clearing participants (including the particulars of clearing margins);
  - (vi) the particulars concerning commodity clearing transactions;
  - (vii) other particulars specified by order of the competent ministry.

(3) The provisions of Article 99, paragraph (7) apply mutatis mutandis to the amount of net assets under item (iii) of the preceding paragraph.

(Duty of Confidentiality of the Officers and Employees of a Commodity Clearing Organization)

Article 176 It is prohibited for the officer (or, if the officer is a corporation, the person that is to perform the duties of the officer) or employee of a commodity clearing organization, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.

(Prohibition on Unfair Differential Treatment)

Article 177 A commodity clearing organization must not treat any particular clearing participant in an unfair discriminatory manner.

(Measures for Ensuring Appropriate Execution of Business of Assuming Commodity Transaction Debts)

Article 178 A commodity clearing organization must specify in its operational business statement that a clearing participant bears the entire loss if a loss due to non-performance of obligation arises from a transaction in a commodity market, and must take other measures to ensure the appropriate execution of business of assuming commodity transaction debts.

(Clearing Margin)

Article 179 (1) A commodity clearing organization must receive a deposit of clearing margin from the person prescribed in each of the following items in accordance with the category set forth in that item, for transactions in a commodity market (limited to transactions in a commodity market that give rise to obligations that are subject to its business of assuming commodity transaction debts and excluding those set forth in Article 2, paragraph (10), item (i), (d); hereinafter the same applies in this Article) pursuant to the provisions of order of the competent ministry:

(i) if a member, etc. that is a clearing participant conducts a transaction in a commodity market (excluding the case set forth in the following item): the person prescribed in each of the sub-items (a) through (d) in accordance with the category of cases set forth in that sub-item:

(a) if a member, etc. conducts a transaction in a commodity market on its own account, or conducts a transaction in a commodity market with which they have been entrusted (limited to transactions with which the member, etc. becomes entrusted after receiving a deposit of customer margin based on the provisions of the following paragraph): that member, etc.;

(b) if a member, etc. conducts a transaction in a commodity market with

- which it has been entrusted (excluding a transaction with which they have been entrusted by a person that has undertaken the brokerage of the entrustment (hereinafter referred to as a "broker" in this Article)) (excluding the case set forth in (a)): the person entrusting the member, etc. with the transaction (meaning the person that entrusts the member, etc. with the transaction in the commodity market, who is not a broker; the same applies in the following paragraph);
- (c) if a member, etc. conducts a transaction in a commodity market with which it has been entrusted (limited to a transaction with which it has been entrusted by a broker that has received a deposit of a brokerage margin based on the provisions of paragraph (3)) (excluding the case set forth in (a)): the broker;
  - (d) if a member, etc. conducts a transaction in a commodity market with which they have been entrusted (limited to a transaction with which they have been entrusted by a broker) (excluding the case set forth in (a) and (c)): the person that entrusted a person to broker the entrustment of the transaction (hereinafter referred to as the "person that entrusts brokerage" in this Article);
- (ii) if a clearing participant conducts a commodity clearing transaction with which they have been entrusted: the person prescribed in each of the sub-items (a) through (d) in accordance with the category of cases set forth in that sub-item:
- (a) if a clearing participant conducts a commodity clearing transaction on the account of the member, etc. that has entrusted them with the transaction or conducts a commodity clearing transaction with which they have been entrusted by a member, etc. that has received a deposit of customer margin based on the following paragraph: that member, etc.;
  - (b) if a clearing participant conducts a commodity clearing transaction with which they have been entrusted (excluding a transaction with which they have been entrusted by a member, etc. who has been entrusted by a person that has undertaken the brokerage of consignment of brokerage of consignment of the transaction (hereinafter referred to as a "clearing broker" in this Article)) (excluding the case set forth in (a)): the person that has entrusted the brokerage of the consignment of the commodity clearing transaction (excluding a clearing broker; hereinafter referred to as a "person entrusting clearing brokerage" in this Article);
  - (c) if a clearing participant conducts a commodity clearing transaction with which they have been entrusted (limited to a transaction with which they have been entrusted by a member, etc. who has been entrusted by a clearing broker that has received a deposit of clearing brokerage margin based on the provisions of paragraph (4)) (excluding the case set forth in

- (a): the clearing broker;
- (d) if a clearing participant conducts a commodity clearing transaction with which they have been entrusted (limited to a transaction with which they have been entrusted by a member, etc. who has been entrusted by a clearing broker) (excluding the case set forth in (a) or (c)): the person that entrusts brokerage of a consignment of a brokerage of a consignment of the commodity clearing transaction (hereinafter referred to as the "consignor that makes a request to the clearing broker" in this Article).
- (2) In the case set forth in item (i) of the preceding paragraph, a member, etc., in becoming entrusted with a transaction in a commodity market or being entrusted to broker a consignment with a commodity clearing transaction, may have the entrustor or broker (or the person that entrusts brokerage, if the transaction is one with which the member, etc. has been entrusted by a broker that has not received a deposit of brokerage margin based on the provisions of the following paragraph from the consignor that makes a request to the clearing broker) deposit customer margin with the member, etc. with the consent of that person, and in the case set forth in item (ii) of the preceding paragraph, they may have the person entrusting clearing brokerage or the clearing broker (or the consignor that makes a request to the clearing broker, if the commodity clearing transaction is one with which the member, etc. has been entrusted by a clearing broker that has not received a deposit of clearing brokerage margin based on the provisions of paragraph (4) from the person making the request of the clearing brokerage) deposit customer margin with the member, etc. with the consent of that person, pursuant to the provisions of order of the competent ministry.
- (3) In undertaking brokerage of a person's entrustment with a transaction in a commodity market, a broker may have the person that entrusts brokerage deposit brokerage margin with the broker, with the consent of that person.
- (4) In becoming entrusted with the brokerage of a consignment of brokerage of consignment of a commodity clearing transaction, a clearing broker may have the cosignor that makes a request to the clearing broker deposit clearing brokerage margin with the clearing broker, with the consent of that person.
- (5) The provisions of Article 103, paragraph (4) apply mutatis mutandis to the commodity clearing organization referred to in paragraph (1). In such a case, the term "paragraph (1)" in paragraph (4) of that Article is deemed to be replaced with "Article 179, paragraph (1)".
- (6) The provisions of Article 103, paragraphs (5) and (6) apply mutatis mutandis to the clearing margin referred to in paragraph (1), the customer margin referred to in paragraph (2), the brokerage margin referred to in paragraph (3), and the clearing brokerage margin referred to in paragraph (4).
- (7) The provisions of Article 103, paragraphs (7), (9), and (10) apply mutatis

mutandis to the cases referred to in paragraphs (2) through (4). In such a case, the phrase "the member, etc. referred to in paragraph (2) or the broker referred to in paragraph (3)" in paragraph (7) of that Article is deemed to be replaced with "the member, etc. referred to in Article 179, paragraph (2), the broker referred to in paragraph (3) of that Article, or the clearing broker referred to in paragraph (4) of that Article"; the phrase "the member, etc. or broker" in that paragraph and paragraph (10) of that Article is deemed to be replaced with "the member, etc. or broker, etc."; the term "commodity exchange" referred to in paragraphs (7), (9), and (10) of that Article is deemed to be replaced with "commodity clearing organization"; and the term "the preceding two paragraphs" in paragraph (9) of that Article is deemed to be replaced with "Article 103, paragraph (7) as applied mutatis mutandis pursuant to Article 179, paragraph (7) following the deemed replacement of terms".

- (8) The provisions of Article 103, paragraphs (8), (9), and (11) apply mutatis mutandis to the case referred to in paragraph (1), item (i), (a) (limited to the case in which a member, etc. conducts a transaction in a commodity market on its own account), (b), or (d) or in paragraph (1), item (ii), (a) (limited to the case in which a clearing participant conducts a commodity clearing transaction on the account of the member, etc. that has entrusted them with the transaction), (b), or (d). In such a case, the phrase "the member, etc. prescribed in item (i) of that paragraph, the person entrusting the relevant party with the transaction in the commodity market which is prescribed in item (ii) of that paragraph, or the person that entrusts brokerage that is prescribed in item (iv) of that paragraph" in paragraph (8) of that Article is deemed to be replaced with "the member, etc. prescribed in Article 179, paragraph (1), item (i), (a), the person entrusting the relevant party with the transaction on the commodity market which is prescribed in (b) of that item, the person that entrusts brokerage that is prescribed in (d) of that item, the member, etc. prescribed in Article 179, paragraph (1), item (ii) (a), the person entrusting clearing brokerage that is prescribed in (b) of that item, or the consignor that makes a request to the clearing broker that is prescribed in (d) of that item"; the phrase "member, etc., person entrusting transactions, or person that entrusts brokerage" in that paragraph and paragraph (11) of that Article is deemed to be replaced with "member, etc., person entrusting transactions, or person that entrusts brokerage, the person entrusting clearing brokerage, or the consignor that makes a request to the clearing broker"; the term "commodity exchange" in paragraphs (8), (9), and (11) of that Article is deemed to be replaced with "commodity clearing organization"; and the phrase "the preceding two paragraphs" in paragraph (9) of that Article is deemed to be replaced with "Article 103, paragraph (8) as applied mutatis mutandis pursuant to Article 179, paragraph (8) following the deemed replacement of terms".

(Clearing Deposit)

- Article 180 (1) A commodity clearing organization may have a clearing participant deposit clearing funds in order to guarantee the performance of its obligations to the commodity clearing organization, pursuant to the provisions of its operational business statement.
- (2) If a commodity clearing organization incurs a loss as a result of a clearing participant's non-performance of obligations, the commodity clearing organization has the right to receive payment in preference over other creditors out of the clearing funds of the clearing participant that has caused the loss.
- (3) If a commodity clearing organization receives payment out of the clearing deposit referred to in the preceding paragraph pursuant to the provisions of that paragraph and the amount is still insufficient, the commodity clearing organization has the right to receive payment in preference over other creditors out of the clearing funds of the clearing participants other than the clearing participant referred to in that paragraph, in accordance with the amount of their clearing deposits.
- (4) If a payment under the provisions of the preceding paragraph is made, the other clearing participants prescribed in that paragraph have the right to claim reimbursement from the clearing participant that has caused the loss prescribed in paragraph (2).
- (5) The provisions of Article 110 apply mutatis mutandis to a clearing deposit. In such a case, the term "commodity exchange" in the same Article is deemed to be replaced with "commodity clearing organization".

(Settlement of Outstanding Obligations)

Article 181 (1) If a commodity clearing organization has specified in its operational business statement the means of settling outstanding obligations in the event that special liquidation proceedings, bankruptcy proceedings, or reorganization proceedings has commenced for a clearing participant (outstanding obligations means obligations arising from transactions in a commodity market, over-the-counter commodity derivatives transactions, or subject transactions prescribed in Article 2, paragraph (28) of the Financial Instruments and Exchange Act that a clearing member has conducted, and which the commodity clearing organization has assumed from the other parties to the transactions or has novated or in any other method borne as business of assuming commodity transaction debts, etc. or as financial instruments obligation assumption services and obligations arising from those transactions that the commodity clearing organization has assumed from the clearing participant; and claims (limited to claims with the same contents as the

obligations) that the commodity clearing organization has acquired against the clearing participant as the value of the obligations which have arisen out of those transactions and which the commodity clearing organization has assumed, taken over, novated, or in any other way borne for that clearing participant; hereinafter the same applies in this paragraph), and those proceedings commence for a clearing member, the calculation of the amount of the claim that the commodity clearing organization or the clearing participant has in terms of outstanding obligations, and other means of settlement, are to be made in accordance with the provisions of the operational method statement of the commodity clearing organization.

(2) The claims provided for in the preceding paragraph which a commodity clearing organization has are bankruptcy claims, rehabilitation claims, or reorganization claims, and the claims provided for in that paragraph which a clearing participant has are claims to the property that belongs to the bankruptcy estate, the property of the rehabilitation debtor, the property of a reorganizing company, or the property of a reorganizing cooperative financial institution.

(Authorization to Change the Articles of Incorporation or Operational Method Statement)

Article 182 A change to the articles of incorporation or operational method statement of a commodity clearing organization does not come into effect unless it receives the authorization of the competent minister pursuant to the provisions of order of the competent ministry.

(Authorization for Dissolution)

Article 183 A resolution on the discontinuation of the business of assuming commodity transaction debts of a commodity clearing organization or a resolution on the dissolution of a commodity clearing organization does not come into effect without the authorization of the competent minister.

(Collection of Reports and On-Site Inspections)

Article 184 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a commodity clearing organization or its clearing participant to submit reports or materials that should serve as a reference on its business or assets, or may have ministry officials enter the office or business office of a commodity clearing organization or its clearing participant and inspect its books and documents or any other article related to its business.

(2) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the on-site inspection under the provisions of the preceding paragraph.



(Business Improvement Orders)

Article 185 If the competent minister finds it to be necessary and appropriate for the proper and reliable performance of the business of assuming commodity transaction debts, the minister, to the extent necessary, may order the commodity clearing organization to change its articles of incorporation, operational method statement or other rules, to change its business methods, or to take other measures necessary for improving its business operations or the state of its property.

(Supervisory Dispositions)

Article 186 (1) If a commodity clearing organization violates this Act, an order based on this Act, or a disposition made by the competent minister based on this Act (hereinafter referred to as "this Act, etc." in this Article), and the competent minister finds it to be necessary and appropriate for the proper and reliable performance of the business of assuming commodity transaction debts, the minister may revoke the commodity clearing organization's license under Article 167 or its approval under the proviso to Article 170, paragraph (2) or Article 173, paragraph (1), or may order it to suspend all or a part of its business for a fixed period not exceeding six months.

(2) If the competent minister discovers that a written application for the license referred to in Article 167, the approval referred to the proviso of Article 170, paragraph (2) or Article 173, paragraph (1), or the authorization referred to in Article 182, or their attached documents contain a false statement about a material particular or lacks a statement of material fact, the minister may revoke the license, approval, or authorization.

(3) If a commodity exchange that has obtained the approval referred to in Article 173, paragraph (1) has had its permission referred to in Article 9 or license referred to in Article 78 revoked or if the commodity exchange falls under one of the items of Article 69 or of Article 94, paragraph (1), the approval ceases to be effective.

(4) If the competent minister discovers that a person has become the officer of a commodity clearing organization by wrongful means or if the officer of a commodity clearing organization violates this Act, etc., the minister may order the commodity clearing organization to dismiss that officer.

(Application, Mutatis Mutandis of Special Provisions on the Means of Conducting Hearings)

Article 187 The provisions of Article 158, paragraph (2) apply mutatis mutandis to the disposition under the provisions of the preceding two Articles, and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on

the revocation of permission, license, approval, or authorization or on an order to dismiss an officer under the provisions of the preceding Article.

## **Section 2 Miscellaneous Provisions**

(Application, Mutatis Mutandis of Provisions on the Completion of Settlement of Transactions)

Article 188 The provisions of Article 113 (including as applied mutatis mutandis pursuant to Article 114) apply mutatis mutandis to a commodity clearing transaction if the member that entrusts a person with the commodity clearing transaction withdraws from a member commodity exchange, if the trading participant that entrusts a person with the commodity clearing transaction loses trading qualification on an incorporated commodity exchange, or if transactions in a commodity market are suspended for the member, etc. that entrusts a person with the commodity clearing transactions, and the settlement of those commodity clearing transactions has not been completed.

(Delegation to Cabinet Order)

Article 189 Beyond what is provided for in Article 167 through the preceding Article, necessary particulars concerning commodity clearing organizations, etc. are specified by Cabinet Order.

## **Chapter IV Commodity Derivatives Business Operator**

### **Section 1 Licensing**

(License for Commodity Derivatives Business)

Article 190 (1) Commodity derivatives business may only be conducted by a person that has been licensed by the competent minister.  
(2) The license referred to in the preceding paragraph loses its effect due to the expiration of the license period unless it is renewed every six years.

(Licensing Conditions)

Article 191 (1) Conditions may be attached to the license referred to in paragraph (1) of the preceding Article (including the renewal of a license referred to in paragraph (2) of that Article; the same applies hereinafter).  
(2) The conditions referred to in the preceding paragraph must be the minimum necessary to maintain order in the commodity markets or to protect the entrustors, etc.

(Application for License)

Article 192 (1) A person seeking to obtain the license referred to in Article 190,

paragraph (1) must submit a written application stating the following particulars to the competent minister:

- (i) the trade name or name;
  - (ii) the amount of net assets;
  - (iii) the names and locations of the head office, branch offices, business offices, and any other offices;
  - (iv) the names or trade names and addresses of the officers;
  - (v) the category of business in relation to the acts set forth in the items of Article 2, paragraph (22);
  - (vi) other particulars specified by order of the competent ministry.
- (2) The articles of incorporation, certificate of registered information, balance sheet, profit and loss statement, and documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.
- (3) The provisions of Article 99, paragraph (7) apply mutatis mutandis to the amount of net assets referred to in paragraph (1), item (ii).

(Licensing Criteria)

Article 193 (1) The competent minister must not grant the license referred to in Article 190, paragraph (1) unless the minister finds that the application for the license referred to in that paragraph conforms to all of the following items:

- (i) the license applicant falls under either of the following sub-items:
  - (a) a stock company (or, in the case of a corporation incorporated in accordance with the laws and regulations of a foreign state, the same type of corporation as a stock company, which has a business office or an office in Japan);
  - (b) a corporation other than a stock company, or a person domiciled in a foreign state (other than one falling under (a)), which is specified by Cabinet Order.
- (ii) the license applicant has sufficient financial basis to soundly perform commodity derivatives business and has good prospects in terms of expected income and expenditures of the commodity derivatives business;
- (iii) the license applicant has the knowledge and experience to fairly and appropriately perform its commodity derivatives business, has sufficient social credibility, and its performance of commodity derivatives business is not likely to result in insufficient protection of entrustors, etc.;
- (iv) the license applicant is not a person who falls under any of the persons referred to in Article 15, paragraph (2), item (i), sub-items (c) through (e), sub-item (i), or sub-item (l);
- (v) the written application or documents that are required to be attached to the written application contain no false statement about a material particular.

(2) With regard to the application of the provisions of item (ii) of the preceding paragraph, if the amount of net assets of a license applicant is below the amount prescribed by order of the competent ministry as the amount that is necessary in order to protect entrustors, etc., the applicant is considered not to have sufficient financial basis to soundly perform its commodity derivatives business.

(Procedures for Disposition)

Article 194 The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the license referred to in Article 190, paragraph (1).

(Particulars Requiring Notification)

Article 195 (1) If a commodity derivatives business operator comes to fall under one of the following cases, the business operator must submit a written notification of this to the competent minister within two weeks from the day in question:

- (i) the business operator changes a particular set forth in Article 192, paragraph (1), item (i), or items (iii) through (vi);
- (ii) the business operator discontinues business related to the acts set forth in Article 2, paragraph (22), items (i) and (ii) at all the business offices and offices that have been established in Japan;
- (iii) the business operator commences, suspends, or resumes commodity derivatives business;
- (iv) the business operator files a petition to commence bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings; or
- (v) the business operator falls under any other case specified by order of the competent ministry.

(2) The documents specified by order of the competent ministry must be attached to the written notification referred to in the preceding paragraph.

(Notification of Concurrent Business)

Article 196 (1) If a commodity derivatives business operator seeks to engage in a business other than the commodity derivatives business or business incidental thereto (other such business is hereinafter referred to as "concurrent business"), the commodity derivatives business operator must submit a written notification of this to the competent minister, pursuant to the provisions of order of the competent ministry. The same applies if the commodity derivatives business operator seeks to change a particular for which they have submitted notification or if they discontinue the concurrent business.

(2) If a commodity derivatives business operator gains a controlling interest in another corporation (meaning a relationship with another corporation in which

the commodity derivatives business operator holds voting rights equivalent to at least a half of all shareholders' or all members' voting rights in that corporation (including voting rights in respect of shares that cannot be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Corporate Bonds and Shares or a relationship specified by order of the competent ministry as one that enables the commodity derivatives business operator to substantially control the business activities of that corporation), the commodity derivatives business operator must submit a written notification of this to the competent minister without delay, pursuant to the provisions of order of the competent ministry. The same applies if a particular for which they have submitted notification changes or if its controlling interest ceases to exist.

(Notification of Discontinuation of Business)

- Article 197 (1) If a commodity derivatives business operator comes to fall under any of the following items, the person set forth in each item must notify the competent minister of this within 30 days from the day in question:
- (i) the business operator discontinues commodity derivatives business: the commodity derivatives business operator;
  - (ii) the business operator disappears in a merger: the officer that represented the commodity derivatives business operator;
  - (iii) the business operator is dissolved due to an order of commencement of bankruptcy proceedings: the bankruptcy trustee;
  - (iv) the business operator is dissolved for reasons other than a merger or an order of commencement of bankruptcy proceedings: the liquidator;
  - (v) the business operator has the whole or a part of its commodity derivatives business succeeded to in a company split: the commodity derivatives business operator; or
  - (vi) the business operator transfers the whole or a part of its commodity derivatives business: the commodity derivatives business operator.
- (2) If a commodity derivatives business operator comes to fall under any of the items of the preceding paragraph (but only if they transfer the whole of the commodity derivatives business in a company split, if they fall under item (v) of that paragraph; and only if they transfer the whole of the commodity derivatives business, if they fall under item (vi) of that paragraph), the commodity derivatives business operator's license under Article 190, paragraph (1) ceases to be effective.
- (3) If a commodity derivatives business operator seeks to discontinue commodity derivatives business, conduct a merger (limited to one in which the corporation surviving the merger or the corporation incorporated in the merger does not

engage in commodity derivatives business), or dissolve for reasons other than a merger or an order of commencement of bankruptcy proceedings, by 30 days prior to that day, the business operator must issue public notice to that effect, as well as post a notice of the fact in a place easily seen by the public at all of their business offices and offices, pursuant to the provisions of order of the competent ministry.

(4) If a commodity derivatives business operator issues public notice under the provisions of the preceding paragraph, they must immediately notify the competent minister of this.

(5) If a commodity derivatives business operator issues public notice under the provisions of paragraph (3), they must promptly close the transactions in the commodity market that they have conducted on the entrustors' accounts and return the property deposited by the entrustors in relation to their commodity derivatives business and the property that the commodity derivatives business operator possesses based on the entrustors' accounts, without delay.

(Restrictions on the Use of Trade Names)

Article 197-2 A person that is not a commodity derivatives business operator must not use a word in its trade name or name which could give rise to the misconception that it is a commodity derivatives business operator.

## **Section 2 Eligible Consignors**

(Obligation to Notify Eligible Consignors)

Article 197-3 If a commodity derivatives business operator receives an offer for a commodity transaction contract from an eligible consignor (limited to one set forth in Article 2, paragraph (25), item (vii) or (viii)), and has not concluded a commodity transaction contract with the eligible consignor in the past, the business operator must notify the eligible consignor, by the time the commodity transaction contract which that application concerns is concluded, that the eligible consignor may make a request under the provisions of paragraph (1) of the following Article.

(Cases in which an Eligible Consignor is Deemed to be a General Consignor)

Article 197-4 (1) An eligible consignor (limited to one set forth in Article 2, paragraph (25), item (vii) or (viii)) may request a commodity derivatives business operator to treat it as a customer other than an eligible consignor or eligible commercial person (hereinafter referred to as "general customer") in relation to a commodity transaction contract.

(2) If a commodity derivatives business operator receives a request under the preceding paragraph, they must approve the request by the time they solicit

the requester to conclude the first commodity transaction contract thereafter, or by the time they conclude the contract.

- (3) Before a commodity derivatives business operator approves the request pursuant to the provisions of the preceding paragraph, they must deliver a document stating the following particulars to the eligible consignor that submitted the request under paragraph (1) (hereinafter referred to the "requester" in this Article):
  - (i) the day on which the request is approved pursuant to the provisions of the preceding paragraph (hereinafter referred to as the "approval date" in this Article);
  - (ii) an indication that they will treat the requester as a general customer if they solicit the requester to conclude a commodity transaction contract or conclude a commodity transaction contract with the requester on or after the approval date;
  - (iii) other particulars provided by order of the competent ministry.
- (4) With the consent of the requester and pursuant to the provisions of Cabinet Order, in lieu of delivering the document under the provisions of the preceding paragraph, a commodity derivatives business operator may provide the requester with the particulars that are required to be stated in that document by means of an electronic data processing system or by any other means of using information and communications technology specified by order of the competent ministry. In such a case, the commodity derivatives business operator is deemed to have delivered the document.
- (5) With regard to the application of the provisions of this Act (other than this Section), if a commodity derivatives business operator gives the approval under paragraph (2) or delivers the document under the provisions of paragraph (3), and the requester is a person set forth in one of the following items, the requester is deemed to be a general customer:
  - (i) the other party to the commodity derivatives business operator's solicitation to conclude a commodity transaction contract on or after the approval date;  
or
  - (ii) the other party with which the commodity derivatives business operator concludes a commodity transaction contract on or after the approval date.
- (6) If the preceding paragraph applies to a requester with regard to the conclusion of a commodity transaction contract (limited to one concluded for the commodity derivatives business operator to act as an agent as provided for in one of the items of Article 2, paragraph (22); hereinafter referred to as a "specified commodity transaction contract" in this paragraph and paragraph (8)), before the commodity derivatives business operator concludes a commodity transaction contract on behalf of the requester based on the specified commodity transaction contract, they must notify the other commodity

derivatives business operator with which the commodity transaction contract is to be concluded (hereinafter referred to as the "counterparty commodity derivatives business operator" in the following paragraph and paragraph (8)) that the requester is deemed to be a general customer in relation to that commodity transaction contract.

- (7) If a commodity derivatives business operator gives the notice under the provisions of the preceding paragraph, the provisions of the preceding Article do not apply to the counterparty commodity derivatives business operator.
- (8) If a commodity derivatives business operator that has concluded a specified commodity transaction contract gives the notice under the provisions of paragraph (6), the requester is deemed to be a general customer with regard to the commodity transaction contracts that the commodity derivatives business operator concludes with the counterparty commodity derivatives business operator on behalf of the requester based on the specified commodity transaction contract, and the provisions of this Act (excluding this Section) apply.
- (9) If a requester newly becomes a person that falls under one of Article 2, paragraph (25), items (i) through (iii), or item (vi) on or after the approval date, the provisions of paragraphs (5) through (8) do not apply to the requester after the day on which the requester becomes such a person.
- (10) A requester that has obtained the approval under the provisions of paragraph (2) may request the commodity derivatives business operator to treat them as eligible consignor with regard to a commodity transaction contract.
- (11) Before a commodity derivatives business operator approves the request referred to in the preceding paragraph (hereinafter referred to as a "request for reinstatement"), they must obtain the consent of the person making the request for reinstatement (hereinafter referred to as a "person requesting reinstatement" in this Article) in writing using a document stating the date on which they will approve the request for reinstatement and the particulars specified by order of the competent ministry.
- (12) With the consent of the person requesting reinstatement and pursuant to the provisions of Cabinet Order, in lieu of obtaining the consent in writing under the provisions of the preceding paragraph, a commodity derivatives business operator may obtain consent to treat the person requesting reinstatement as an eligible consignor by means of an electronic data processing system or any other means of using information and communications technology specified by order of the competent ministry. In such a case, the commodity derivatives business operator is deemed to have obtained written consent.
- (13) Once a commodity derivatives business operator approves a request for reinstatement with the consent of the person requesting reinstatement



pursuant to the provisions of paragraph (11), the provisions of paragraphs (5), (6), and (8) do not apply during the period from the day on which the request is approved to the day preceding the day on which the business operator gives the new approval under paragraph (2).

(When a Customer Other Than an Eligible Consignor is a Corporation Deemed to be an Eligible Consignor)

- Article 197-5 (1) A corporation (other than an eligible consignor, eligible commercial person, or corporation prescribed in Article 197-9, paragraph (1)) may request a commodity derivatives business operator to treat it as eligible consignor with regard to a commodity transaction contract.
- (2) Before approving a request under the provisions of the preceding paragraph, a commodity derivatives business operator must obtain the consent of the corporation that has made the request (hereinafter referred to as the "requester" in this Article) using a document that states the following particulars. In such a case, the business operator must set the due date specified in item (ii) to the day on which one year has elapsed counting from the approval date specified in item (i) (or, in the case specified by order of the competent ministry, a day before one year elapses, which is specified by order of the competent ministry):
- (i) the day on which they give the approval under the provisions of this paragraph (hereinafter referred to as the "approval date" in this Article);
  - (ii) the last day of the period during which they will treat the requester as eligible consignor in soliciting the requester to conclude a commodity transaction contract or in concluding a commodity transaction contract with the requester (hereinafter referred to as the "due date" in this Article);
  - (iii) a statement to the effect that the requester understands the following particulars:
    - (a) if an eligible consignor offers a commodity transaction contract to the commodity derivatives business operator or concludes a commodity transaction contract with the commodity derivatives business operator, the particulars specified by order of the competent ministry as the content of special provisions for the application of this Act, if an eligible entrustor is solicited to conclude a commodity transaction contract by a commodity derivatives business operator;
    - (b) if a person that is inappropriate to be treated as eligible consignor in relation to the commodity transaction contracts, in light of their knowledge, experience, and the state of their property, will be treated as eligible consignor, it is likely to result in insufficient protection of that person.
  - (iv) in soliciting the requester to conclude a commodity transaction contract before the due date, or in concluding a commodity transaction contract with

- the requester before the due date, an indication that the business operator will treat the requester as eligible consignor;
- (v) in soliciting the requester to conclude a commodity transaction contract on or after the due date, or in concluding a commodity transaction contract with the requester after the due date, an indication that the business operator will treat the requester as a general consignor;
  - (vi) an indication that the requester may request the commodity derivatives business operator to treat them as a general customer;
  - (vii) other particulars specified by order of the competent ministry.
- (3) The provisions of paragraph (12) of the preceding Article apply *mutatis mutandis* to the consent in writing under the provisions of the preceding paragraph.
- (4) With regard to the application of the provisions of this Act (excluding this Section), when a commodity derivatives business operator gives the approval under paragraph (2) and the requester gives the consent in writing under the provisions of that paragraph, if the requester is a person set forth in one of the following items, the requester is deemed to be an eligible consignor:
- (i) a person that the commodity derivatives business operator solicits to conclude a commodity transaction contract during the period from the approval date to the due date; or
  - (ii) a person with which the commodity derivatives business operator concludes a commodity transaction contract during the period from the approval date to the due date.
- (5) If the preceding paragraph applies to a requester in relation to the conclusion of a commodity transaction contract (limited to one concluded for the commodity derivatives business operator to act as an agent as provided for in one of the items of Article 2, paragraph (22); hereinafter referred to as the "specified commodity transaction contract" in this paragraph and the following paragraph), before the commodity derivatives business operator concludes a commodity transaction contract on behalf of the requester based on the specified commodity transaction contract, the business operator must notify the other commodity derivatives business operator with which the commodity transaction contract is to be concluded (hereinafter referred to as a "counterparty commodity derivatives business operator" in the following paragraph) that the requester is deemed to be an eligible consignor in relation to the commodity transaction contract.
- (6) If a commodity derivatives business operator that has concluded a specified commodity transaction contract gives the notice under the provisions of the preceding paragraph, the requester is deemed to be an eligible consignor in relation to the commodity transaction contract that the commodity derivatives business operator concludes with the counterparty commodity derivatives

business operator on behalf of the requester based on the specified commodity transaction contract, and the provisions of this Act (excluding this Section) apply.

- (7) From the day that the period specified by order of the competent ministry has passed counting from the approval date until the due date, the requester may request the commodity derivatives business operator to continue to treat them as eligible consignor after the due date.
- (8) If a commodity derivatives business operator approves the request referred to in the preceding paragraph (hereinafter referred to as "request for renewal" in this Article) on or before the due date, the approval is deemed to have been given on the day following the due date.
- (9) If a commodity derivatives business operator is to approve the request for renewal, the provisions of paragraphs (2) through (8) apply mutatis mutandis to the approval. In such a case, the phrase "the day on which they give the approval under this paragraph" in paragraph (2), item (i) is deemed to be replaced with "the day that is deemed to be the day on which on which they have given the approval pursuant to the provisions of paragraph (8)" and the phrase "approval under the provisions of paragraph (2)" in paragraph (4) is deemed to be replaced with "approval under the provisions of paragraph (8)".
- (10) A requester that has obtained the approval under paragraph (2) may request a commodity derivatives business operator to treat them as a general customer on or after the approval date.
- (11) If a commodity derivatives business operator receives a request under the preceding paragraph (hereinafter referred to as "request for reinstatement" in this Article), they must approve the request for reinstatement by the time they solicit the requester to conclude the first commodity transaction contract thereafter, or by the time they conclude the contract.
- (12) Before a commodity derivatives business operator approves a request for reinstatement, they must deliver a document that states the date on which they will approve the request for reinstatement and other particulars specified by order of the competent ministry to the corporation that has made the request for reinstatement.
- (13) The provisions of paragraph (4) of the preceding Article apply mutatis mutandis to the delivery of a document under the provisions of the preceding paragraph.
- (14) If a commodity derivatives business operator approves the request for reinstatement pursuant to the provisions of paragraph (11), the provisions of paragraphs (4) through (9) do not apply during the period from the day on which they approve the request for reinstatement until the day preceding the day on which they newly give the approval under the provisions of paragraph (2).

(When a Customer Other Than an Eligible Consignor who is an Individual is Deemed to be an Eligible Consignor)

- Article 197-6 (1) An individual who satisfies the requirements specified by order of the competent ministry for a person who is equivalent to an eligible consignor in light of the person's knowledge and experience and the state of property (excluding a person falling under Article 2, paragraph (25), item (iii) or the member, etc. of a commodity exchange) may request a commodity derivatives business operator to treat them as eligible consignor in relation to commodity transaction contracts.
- (2) If a commodity derivatives business operator receives a request under the preceding paragraph, they must deliver a document that states the particulars set forth in paragraph (2), item (iii), (a) and (b) of the preceding Article to the individual that has made the request (hereinafter referred to as the "requester" in this Article) and confirm that the requester falls under the person prescribed in the preceding paragraph.
- (3) The provisions of Article 197-4, paragraph (4) apply mutatis mutandis to the delivery of a document under the provisions of the preceding paragraph.
- (4) From the day that the period specified by order of the competent ministry has passed counting from the date of the approval under paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to paragraph (6) (referred to as the "approval date" in the following paragraph) until the due date specified in paragraph (2), item (ii) of the preceding Article as applied mutatis mutandis pursuant to paragraph (6), the requester may request the commodity derivatives business operator to continue to treat them as eligible consignor after the end date.
- (5) A requester who has obtained the approval referred to in paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to the following paragraph may request the commodity derivatives business operator to treat them as a general customer on or after the approval date.
- (6) The provisions of paragraphs (2) through (6) of the preceding Article apply mutatis mutandis when a commodity derivatives business operator approves the request referred to in paragraph (1), the provisions of paragraphs (8) and (9) of that Article apply mutatis mutandis when a commodity derivatives business operator approves the request referred to in paragraph (4), and the provisions of paragraphs (11) through (14) of that Article apply mutatis mutandis when a commodity derivatives business operator approves the request referred to in the preceding paragraph. In such a case, the term "the corporation that has made the request" in paragraph (2) of that Article is deemed to be replaced with "the requester provided for in Article 197-6, paragraph (2)" and the phrase "the corporation that has made the request for

reinstatement" in paragraph (12) of that Article is deemed to be replaced with "the person that has made the request referred to in Article 197-6, paragraph (5)", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Obligation to Notify Eligible Commercial Persons)

Article 197-7 If a commodity derivatives business operator receives an offer for a commodity transaction contract from an eligible commercial person, and has never-the-counter concluded a commodity transaction contract (limited to contracts related to commercial derivative transactions of which the underlying commodities are goods for which the eligible commercial person buys and sells, acts as a mediator, intermediary or agent for buying and selling or engages in the production, the processing or the use in the course of trade or other goods specified by order of the competent ministry as being related to those goods, or electric power which the eligible commercial person buys and sells, acts as a mediator, intermediary or agent for buying and selling, or conducts other acts specified by order of the competent ministry in the course of trade; hereinafter the same applies in this Article to Article 197-9 and Article 220-4, paragraph (2), item (ii)) in the past with the eligible commercial person, the commodity derivatives business operator must notify the eligible commercial person by the time the commodity transaction contract which that application concerns is concluded, that the eligible commercial person may make an offer under the provisions of paragraph (1) of the following Article.

(When Eligible Commercial Persons are Deemed to be General Consignors)

Article 197-8 (1) Eligible commercial persons may make a request to a commodity derivatives business operator to treat them as a general customer in relation to a commodity transaction contract.

(2) The provisions of Article 197-4, paragraphs (2) through (13) apply mutatis mutandis to eligible commercial persons. In such a case, the term "specified entrustor" in paragraphs (3), (10), and (12) of that Article is deemed to be replaced with "eligible commercial person", and any other necessary technical replacement of terms is specified by Cabinet Order.

(When Corporations Other Than Eligible Consignors or Eligible Commercial Persons are Deemed to be Eligible Commercial Persons)

Article 197-9 (1) A corporation (excluding eligible consignors and eligible commercial persons) seeking to file an application for a commodity transaction contract may request that a commodity derivatives business operator treat it as eligible commercial persons, if the corporation, in the course of trade, buys or sells, acts as a mediator, intermediary or agent for the buying and selling, or

engages in the production, the processing or the use of all the goods that are the underlying commodities of commodity derivatives transactions concluded based on commodity transaction contract or other goods specified by order of the competent ministry as being related to those goods, or in the course of trade, buys or sells, acts as a mediator, intermediary or agent for the buying and selling, or conducts other acts specified by order of the competent ministry of electric power that are the underlying commodities.

(2) The provisions of Article 197-5, paragraphs (2) through (14) apply mutatis mutandis to the corporation prescribed in the preceding paragraph. In such a case, the term "eligible consignor" in paragraph (2), items (ii) through (iv) of that Article and paragraphs (4) through (7) of that Article is deemed to be replaced with "eligible commercial person", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Delegation to Cabinet Order)

Article 197-10 Beyond what is prescribed in this Section, procedures when an eligible consignor (limited to one set forth in Article 2, paragraph (25), item (vii) or (viii)) is deemed to be a general customer, procedures when a customer other than an eligible consignor, eligible commercial person, or a corporation prescribed in paragraph (1) of the preceding Article is deemed to be an eligible consignor, procedures when an eligible commercial person is deemed to be a general customer, or procedures when a corporation prescribed in that paragraph is deemed to be an eligible commercial person, and other necessary particulars for the application of the provisions of this Section are specified by Cabinet Order.

### **Section 3 Services**

(Posting of Signs)

Article 198 (1) A commodity derivatives business operator must post a sign specified by order of the competent ministry in a conspicuous place at each business office or office.

(2) A person other than a commodity derivatives business operator must not post the sign referred to in the preceding paragraph or a similar sign.

(Prohibition of Lending One's Name)

Article 199 A commodity derivatives business operator must not have another person engage in commodity derivatives business using their name.

(Registration of Sales Representatives)

Article 200 (1) A commodity derivatives business operator must have their

officers and employees that engage in the following acts on behalf of the commodity derivatives business operator (hereinafter such a person is referred to as a "sales representative") registered by the competent minister:

- (i) the acts set forth in the items of Article 2, paragraph (22);
  - (ii) soliciting the consignment of transactions in a commodity market (other than a commodity clearing transaction; hereinafter the same applies in this Chapter) or soliciting requests for acting as an intermediary, broker, or agent in entrusting a person with the transactions;
  - (iii) soliciting requests for brokerage of a person's entrustment with commodity clearing transactions or soliciting requests for acting as an intermediary, broker, or agent in entrusting a person with the transactions;
  - (iv) soliciting the entrustment of foreign commodity market transactions (other than those similar to commodity clearing transactions; hereinafter the same applies in this Chapter) or soliciting requests for acting as an intermediary, broker, or agent in entrusting a person with the transactions;
  - (v) soliciting requests for brokerage of a person's entrustment with foreign commodity market transactions that are similar to commodity clearing transactions or soliciting requests for acting as an intermediary, broker, or agent in entrusting a person with the transactions;
  - (vi) soliciting offers for over-the-counter commodity derivatives transactions or soliciting requests for acting as an intermediary, broker, or agent in entrusting a person with the transactions.
- (2) A commodity derivatives business operator must not have a person other than a sales representative to which a registration under the preceding paragraph concerns (hereinafter referred to as a "registered sales representative") perform the duties of a sales representative.
- (3) A commodity derivatives business operator seeking to obtain registration pursuant to the provisions of paragraph (1) must submit a written application stating the following particulars to the competent minister:
- (i) the name or trade name of the registration applicant and the name of their representative;
  - (ii) the following particulars with regard to the sales representative which the application for registration concerns:
    - (a) the name, date of birth, and address;
    - (b) whether the person is an officer or an employee;
    - (c) whether the person has experience of performing the duties of a sales representative (including one pertaining to the registration under the provisions of paragraph (1) as applied mutatis mutandis pursuant to Article 240-11; hereinafter the same applies in this item and paragraph (1), items (ii) and (iii) of the following Article), and if the person has experience of performing the duties of a sales representative, the trade name or name

- of the commodity derivatives business operator or commodity derivatives intermediary service provider to which the person belonged and the period during which the person performed those duties;
- (d) whether the person has experience of performing commodity derivatives intermediation services, and if the person has experience of performing commodity derivatives intermediation services, the period during which the person performed the services.
- (4) A curriculum vitae of the sales representative that seeks to be registered and the documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.
- (5) When an application for registration under the provisions of paragraph (3) is filed, the competent minister must immediately register the name, date of birth, and particulars specified by order of the competent ministry in the register except in the case that falls under the provisions of paragraph (1) of the following Article.
- (6) Upon making a registration under the provisions of the preceding paragraph, the competent minister must notify the registration applicant of this in writing without delay.
- (7) The registration referred to in paragraph (1) ceases to be effective upon the expiration of the registration period unless it is renewed every six years.

(Refusal of Registration of a Sales Representative)

- Article 201 (1) If the sales representative which an application for registration concerns falls under one of the following items or if the written application or documents that are required to be attached to the written application contain a false statement about a material particular or lack a statement of a material fact, the competent minister must refuse the registration:
- (i) a person that falls under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k);
- (ii) a person whose registration as sales representative has been revoked pursuant to the provisions of Article 204, paragraph (1) (including as applied mutatis mutandis pursuant to Article 240-11), and for whom five years have not passed since the day of the revocation;
- (iii) a person who is registered as a sales representative belonging to a commodity derivatives business operator or commodity derivatives intermediary service provider other than the registration applicant; or
- (iv) a person who has obtained the registration referred to in Article 240-2, paragraph (1).
- (2) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to a refusal of registration under the provisions of the preceding paragraph.



(Authority of Sales Representatives)

Article 202 A sales representative is deemed to have the authority to perform all acts out of court in relation to the acts set forth in the items of Article 200, paragraph (1) on behalf of the commodity derivatives business operator to which the sales representative belongs; provided, however, that this does not apply if the counterparty acts in bad faith.

(Notification Regarding a Sales Representative)

Article 203 If any of the following circumstances arises for a registered sales representative, the commodity derivatives business operator must notify the competent minister of this without delay:

- (i) there is a change in a particular set forth in Article 200, paragraph (3), item (ii), (a) or (b);
- (ii) the registered sales representative comes to fall under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) (with regard to sub-items (d) through (i) of that item, this is limited to the part that is related to the provisions of a foreign law or regulation that is equivalent to this Act or to the facility of a foreign state equivalent to a commodity exchange);
- (iii) the registered sales representative no longer perform the duties of a sales representative due to leaving the workplace or other reasons.

(Revocatio of the Registration of a Sales Representative)

Article 204 (1) If the competent minister discovers that a registered sales representative has been registered by wrongful means or if a registered sales representative falls under one of the following items, the minister may revoke the registration or order the registered sales representative to suspend their duties for a fixed period not exceeding two years:

- (i) the registered sales representative has come to fall under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) (with regard to (d) of that item, this is limited to the part that is related to the revocation of the license referred to in Article 332, paragraph (1) or Article 342, paragraph (1) or to the provisions of a foreign law or regulation that is equivalent to this Act);
  - (ii) the registered sales representative has violated a law or regulation or is found to have committed an extremely inappropriate act in relation to duties as a sales representative.
- (2) If the competent minister decides to render a disposition based on the provisions of the preceding paragraph, the minister must notify the commodity derivatives business operator that has had the sales representative registered

of this in writing.

- (3) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of paragraph (1), and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of a registration under the provisions of paragraph (1).

(Deletion of the Registration of a Sales Representative)

Article 205 The competent minister deletes the registration of a sales representative from the register in the following cases:

- (i) the competent minister revokes the registration of the sales representative pursuant to the provisions of paragraph (1) of the preceding Article;
- (ii) the commodity derivatives business operator to which the sales representative belongs is dissolved or the business operator discontinues commodity derivatives business; or
- (iii) the competent minister confirms that the sales representative will no longer perform duties as a sales representative due to leaving the workplace or other reasons.

(Registration Work by a Commodity Futures Association for the Registration of Sales Representatives)

- Article 206 (1) The competent minister may have a commodity futures association prescribed in Article 241, paragraph (1) (hereinafter referred to as an "association" in this Article through Article 208, Article 239, and Article 240-5, item (v)) conduct the work concerning the registration prescribed in Article 200, Article 201, and the preceding three Articles, which concerns the sales representative of a commodity derivatives business operator that belongs to that association (hereinafter referred to as "registration work" in this Article and Article 208) pursuant to the provisions of order of the competent ministry.
- (2) If the competent minister decides to have an association conduct registration work pursuant to the provisions of the preceding paragraph, the minister is not to conduct the registration work.
- (3) If an association is to conduct registration work pursuant to the provisions of paragraph (1), it must specify the particulars concerning the registration of sales representatives in its articles of incorporation and obtain the approval of the competent minister.
- (4) If an association that conducts registration work pursuant to the provisions of paragraph (1) makes a registration under the provisions of Article 200, paragraph (5), makes a change to the registration related to the notification under the provisions of Article 203, renders a disposition under the provisions of Article 204, paragraph (1) (excluding the revocation of a registration), or deletes a registration under the provisions of the preceding Article, it must

notify the competent minister of this pursuant to the provisions of order of the competent ministry.

- (5) If an association that conducts registration work pursuant to the provisions of paragraph (1) fails to take a measure prescribed in Article 204, paragraph (1) even though the registered sales representative of a commodity derivatives business operator that belongs to the association falls under item (i) or (ii) of that paragraph, and the competent minister finds it to be necessary and appropriate for maintaining the order in the commodity market or for the protection of entrustors, the minister may order the association to take the measure prescribed in that paragraph.
- (6) The provisions of Article 158, paragraph (2) apply mutatis mutandis to the order under the provisions of the preceding paragraph.

(Payment of Registration Fees)

Article 207 (1) A commodity derivatives business operator that seeks to have a sales representative registered must pay a registration fee to the national government (or the association, if the sales representative is registered with an association pursuant to the provisions of paragraph (1) of the preceding Article) pursuant to the provisions of Cabinet Order.

- (2) A registration fee under the preceding paragraph which has been paid to an association is the revenue of the association.

(Request for Administrative Review)

Article 208 A commodity derivatives business operator that is dissatisfied with the inaction concerning an application for registration under the provisions of Article 200, paragraph (3), a refusal of registration under the provisions of Article 201, paragraph (1), or a disposition under the provisions of Article 204, paragraph (1), of an association that conducts registration work pursuant to the provisions of Article 206, paragraph (1), may request the competent minister for an administrative review. In such a case, the competent minister is deemed to be a higher administrative authority of the association with regard to application of the provisions of Article 25, paragraphs (2) and (3), Article 46, paragraphs (1) and (2), and Article 49, paragraph (3) of the Administrative Complaint Review Act (Act No. 68 of 2014).

(Restriction on the Disposal of Articles Possessed by a Commodity Derivatives Business Operator)

Article 209 (1) A commodity derivatives business operator must not use an article in its possession on deposit by an entrustor, etc. or in the entrustors' account as collateral, nor lend or otherwise dispose of the article contrary to the purpose of the commodity transactions contract, without obtaining the

consent of the entrustor, etc. in writing.

- (2) With the consent of the entrustor, etc. and pursuant to the provisions of Cabinet Order, in lieu of the consent in writing under the provisions of the preceding paragraph, a commodity derivatives business operator may obtain consent on the use of an article in its possession on deposit by the entrustor, etc. as collateral, or to lend or disposal of the article by means of using an electronic data processing system or other means of using information and communications technology specified by order of the competent ministry. In such a case, the commodity derivatives business operator is deemed to have obtained the consent in writing.

(Segregation of Customer Properties)

Article 210 In order to ensure the performance of obligations arising from the commodity derivatives business, a commodity derivatives business operator must take the measures specified in each of the following items for the properties specified in those items, in order to preserve those properties:

- (i) money, securities, and other articles deposited by an entrustor, etc. and property equivalent to the value of the money, securities, and other articles in the entrustor's account (excluding articles specified by order of the competent ministry; the money, securities, and other articles are referred to as "entrustor's assets" in Article 304, Article 306, paragraph (1), and Article 311, paragraph (1)) (the property is referred to as "property subject to preservation" in Article 300, item (iii) and Article 309), in relation to transactions in a commodity market: to deposit the property with an entrustor protection fund (meaning a consignor protection fund prescribed in Article 270), to deposit the property with a trust company, etc. separately from the commodity derivatives business operator's own property, or take other measures specified by order of the competent ministry;
- (ii) money, securities, and other articles deposited by an entrustor, etc. and property equivalent to the value of the money, securities, and other articles in the entrustor's, etc. account (excluding articles specified by order of the competent ministry), in relation to foreign commodity market transactions and over-the-counter commodity derivatives transactions: to deposit the property with a trust company, etc. separately from the commodity derivatives business operator's own property, or take other measure specified by order of the competent ministry.

(Net Assets Regulation Ratio)

Article 211 (1) A commodity derivatives business operator (other than a bank or any other person specified by Cabinet Order; hereinafter the same applies in this Article and Article 235) must calculate the ratio of the amount of net

assets to the amount calculated pursuant to the provisions of order of the competent ministry as the amount for covering any potential risks arising from commodity derivatives transactions in association with the fluctuation of quotations and other factors (hereinafter referred to as the "net assets regulation ratio"), and notify the competent minister of that ratio at the end of each month and when specified by order of the competent ministry.

- (2) A commodity derivatives business operator must ensure that its net assets regulation ratio does not fall below 120 percent.
- (3) A commodity derivatives business operator must prepare a document stating its net assets regulation ratio as of the last day of March, June, September, and December of each year, keep the document at all of its business offices and offices, and make the document available for public inspection for a three-month period beginning from the day one month after the last day.
- (4) The provisions of Article 99, paragraph (7) apply mutatis mutandis to the amount of net assets under paragraph (1).

#### (Prohibition of Trading Against Oneself)

Article 212 If a commodity derivatives business operator is entrusted with a transaction in a commodity market, etc. or is entrusted with a foreign commodity market transaction, etc. (meaning a foreign commodity market transaction, intermediation, brokerage, or agency for entrusting a person with that transaction, brokerage for the entrustment of foreign commodity market transactions that are similar to commodity clearing transactions, or intermediation, brokerage, or agency for entrusting a person with the brokerage; hereinafter the same applies in this Chapter), the business operator must not close the transaction by becoming the counterparty oneself instead of conducting the transaction in the commodity market, etc. with which it has been entrusted.

#### (Principle of Honesty and Fairness)

Article 213 A commodity derivatives business operator and their officers and employees must execute business with honesty and fairness to customers.

#### (Regulation of Advertising)

Article 213-2 (1) When advertising the content of their commodity derivatives business or performing similar acts specified by order of the competent ministry, a commodity derivatives business operator must indicate the following particulars pursuant to the provisions of order of the competent ministry:

- (i) the trade name or name of the commodity derivatives business operator;
- (ii) the fact that the commodity derivatives business operator is a commodity

- derivatives business operator;
- (iii) the particulars concerning the content of its commodity derivatives business which are specified by Cabinet Order as material particulars that would affect the decision of the customer.
- (2) When advertising the content of its commodity derivatives business or performing similar acts specified by order of the competent ministry, a commodity derivatives business operator must not make an indication that is significantly contradictory to the facts or particularly misleading about the prospect of profiting from performing the act set forth in one of the items of Article 2, paragraph (22), or about the particulars specified by order of the competent ministry.

(Prohibition of Unjust Solicitation)

Article 214 A commodity derivatives business operator must not perform any of the following acts:

- (i) providing a customer with a conclusive assessment of a particular that is uncertain or with information that could mislead the customer into believing that a particular that is uncertain is actually certain, and conducting a solicitation set forth in one of Article 200, paragraph (1), items (ii) through (vi);
- (ii) providing a customer with false information concerning the conclusion of a commodity transaction contract or its solicitation;
- (iii) becoming entrusted with a transaction in a commodity market, etc. or a foreign commodity market transaction, etc. without receiving instructions from the customer with regard to the volume, amount of consideration, contract price, etc., or other particulars specified by order of the competent ministry (excluding entrustment the conclusion of a commodity investment advisory contract (meaning a commodity investment advisory contract prescribed in Article 2, paragraph (2) of the Act for the Regulation of Business in Commodity Investment; hereinafter the same applies in the following Article and Article 240-16, paragraph (1), item (i), (d)) with the customer and other acts specified by order of the competent ministry as being unlikely to lack in entrustor protection or harm the fairness of transactions);
- (iv) becoming entrusted with a transaction in a commodity market (limited to one set forth in Article 2, paragraph (3), item (i); hereinafter the same applies in this item) by a customer and, before issuing the offer on the trade with which they are entrusted, conducting a transaction in a commodity market at a more advantageous price than the price for the trade with which they are entrusted (meaning a price that is lower than the price involved in the entrusted transaction, if buying; and a price that is higher than the price involved in the entrusted transaction, if selling) with the purpose of closing

- the same trade as the one with which it has been entrusted, in the commodity market on which it is entrusted with the trade on its own account; or becoming entrusted with a foreign commodity market transaction (limited to one that is equivalent to the transaction set forth in item (i) of that paragraph; hereinafter the same applies in this item) by a customer and, before issuing the offer on the trade with which they are entrusted, conducting a foreign commodity market transaction at a more advantageous price than the price for the trade with which they are entrusted (meaning a price that is lower than the price involved in the entrusted transaction, if buying; and a price that is higher the price involved in the entrusted transaction, if selling) with the purpose of closing the same trade as the one with which they are entrusted, in the foreign commodity market on which they are entrusted with the trade on its own account;
- (v) conducting a solicitation set forth in one of Article 200, paragraph (1), items (ii) through (vi) to a customer that has manifested the intention not to make an entrustment or offer under items (ii) through (vi) of that paragraph (including an intention that indicates a wish not to be solicited to entrust or make that offer);
  - (vi) conducting a solicitation set forth in one of Article 200, paragraph (1), items (ii) through (vi) to a customer, in a manner that is likely to make the customer uncomfortable;
  - (vii) before conducting a solicitation to conclude a commodity transaction contract, to solicit a customer to conclude the contract without confirming whether or not the customer wishes to be solicited after telling the customer its trade name or name and the fact that it is a solicitation for the conclusion of a commodity transaction contract;
  - (viii) in respect of transactions in a commodity market, etc. or foreign commodity market transactions, etc., recommending a customer to make the volume and maturity in a sale, purchase, or other equivalent trade of component products of listed commodities, etc. (including commodities equivalent to component products of listed commodities, etc. of a foreign commodity market) the same as the volume and maturity of a corresponding transaction (meaning a transaction that reduces the losses arising from the transaction);
  - (ix) visiting or telephoning a customer that has not requested to be solicited to conclude a commodity transaction contract (limited to one specified by Cabinet Order in consideration of the content of the commodity transaction contract and other circumstances, as a contract for which it is particularly necessary to ensure the protection of the entrustor, etc.; hereinafter the same applies in this item), and soliciting the customer to conclude a commodity transaction contract (excluding acts specified by order of the competent

ministry as not likely to be insufficient in protecting entrustors, etc. or in harming the fairness of transactions);

- (x) beyond what is provided for in the preceding items, acts which are specified by order of the competent ministry as acts that do not protect the entrustor, etc. or that harm the fairness of transactions.

(Prohibited Acts when Engaging in Business Under a Commodity Investment Advisory Contract)

Article 214-2 When engaging in business under a commodity investment advisory contract, a commodity derivatives business operator must not perform the following acts:

- (i) conducting a commodity derivatives transaction on their own account or soliciting a person to conclude a commodity transaction contract using information on the business under a commodity investment advisory contract;
- (ii) beyond what is set forth in the preceding item, acts which are specified by order of the competent ministry as acts that do not protect the entrustor, etc. or that harm the fairness of transactions.

(Prohibition of Compensation for Losses)

Article 214-3 (1) A commodity derivatives business operator may not perform any of the following acts:

- (i) making an offer or promise, or having a third party make an offer or promise, in relation to a commodity derivatives transaction (excluding one specified by Cabinet Order as unlikely to harm the fairness of transactions; hereinafter the same applies in this Article), to a customer or to a person designated by the customer, that if the customer (if a trust company, etc. conducts commodity derivatives transactions on the account of a person that has created a trust based on a trust agreement, this includes the person that has created the trust; hereinafter the same applies in this Article) incurs a loss from the commodity derivatives transaction, or if a predetermined amount of profit does not accrue from the commodity derivatives transaction, the business operator or a third party will provide the customer or a third party with an economic benefit to cover the whole or part of the loss or to supplement their profits;
- (ii) making an offer or promise, or having a third party make an offer or promise, in relation to a commodity derivatives transaction, to a customer or to a person designated by the customer, that the business operator or a third party will provide the customer or a third party with an economic benefit to cover the whole or part of a loss that the customer has incurred in relation to the commodity derivatives transaction, or to add to the profits that the



- customer has accrued in relation to the transaction;
- (iii) providing an economic benefit to a customer or third party, or having a third party provide an economic benefit to a customer or third party, in relation to a commodity derivatives transaction, in order to cover the whole or part of a loss that the customer has incurred in relation to that commodity derivatives transaction, or in order to add to the profit that the customer has accrued in relation to the transaction.
- (2) The customer of a commodity derivatives business operator must not perform any of the following acts:
- (i) making or having a third party make the promise referred to in item (i) of the preceding paragraph (but only if that promise is based on a request that the customer has personally made or had a third party make), with a commodity derivatives business operator or a third party in relation to a commodity derivatives transaction;
  - (ii) making or having a third party make the promise referred to in item (ii) of the preceding paragraph (but only if that promise is based on a request that the customer has personally made or had a third party make), with a commodity derivatives business operator or a third party in relation to a commodity derivatives transaction;
  - (iii) receiving an economic benefit that is provided as referred to in item (iii) of the preceding paragraph or having a third party receive the economic benefit (but only if this is based on a promise referred to in one of the preceding two items, if that promise is based on a request that the customer has personally made or had a third party make, and if the economic benefit is provided based on a request that the customer has personally made or had a third party make) from a commodity derivatives business operator or a third party in relation to a commodity derivatives transaction.
- (3) The provisions of paragraph (1) do not apply if the offer, promise, or provision of an economic benefit referred to in the items of that paragraph is made in order to cover the whole or a part of a loss incurred due to problematic conduct (meaning problematic conduct specified by order of the competent ministry as referred to in Article 221, paragraph (2)); hereinafter the same applies in this paragraph and the following paragraph); provided, however, that with regard to the offer or promise referred to paragraph (1), item (ii) or the provision referred to in item (iii) of that paragraph, this only applies if the commodity derivatives business operator has received confirmation from the competent minister in advance that the loss to be covered was incurred due to problematic conduct, or in other cases specified by order of the competent ministry.
- (4) The provisions of paragraph (2) do not apply if the promise referred to in item (i) or (ii) of that paragraph is a promise to cover the whole or part of a loss incurred due to problematic conduct, or if the provision of an economic benefit

referred to in item (iii) of that paragraph is provided in order to cover the whole or part of a loss incurred due to problematic conduct.

- (5) A person seeking the confirmation referred to in the proviso to paragraph (3) must submit to the competent minister a written application stating the fact for which confirmation is sought and other particulars specified by order of the competent ministry, pursuant to the provisions of order of the competent ministry, by attaching a document specified by order of the competent ministry as a necessary document for proving the fact.

(Principle of Suitability)

Article 215 A commodity derivatives business operator must conduct commodity derivatives business so that they will not conduct a solicitation that is found to be inappropriate in light of the knowledge, experience, and status of property of the entrustor, etc. or the purpose of concluding a commodity transaction contract and compromise the protection of the entrustors, etc. or risk compromising the protection of the entrustors, etc.

(Conformity to Entrustment Contract Regulations)

Article 216 A commodity derivatives business operator must comply with the entrustment contract regulations established by the commodity exchange in becoming entrusted with transactions in a commodity market, etc.

(Delivery of Documents Prior to Conclusion of a Commodity Transaction Contract)

Article 217 (1) If a commodity derivatives business operator seeks to conclude a commodity transactions contract, they must deliver a document stating the following particulars to the customer in advance, pursuant to the provisions of order of the competent ministry:

- (i) the following particulars, if there is a possibility that the amount of trading under the commodity transaction contract (for transactions set forth in Article 2, paragraph (3), item (iv), this means the transactions set forth in (a) through (e) of that item which is closed when the right referred to in that is exercised; for transactions set forth in paragraph (14), item (iv) of that Article, this means the transactions set forth in (a) through (d) of the that item which is closed when the right referred to in that item is exercised; and for transactions set forth in item (v) of that paragraph, this means a transaction resulting in the parties paying and receiving money as prescribed in that item which is closed when the right referred to in that item is exercised) (the amount of trading means the amount arrived at by multiplying the price of the trades, contract price, or agreed figure by the quantity or volume of the trade) will exceed the amount of the clearing

margin, brokerage margin, clearing brokerage margin, or other security deposit, or any other amounts specified by order of the competent ministry (hereinafter referred to as the "clearing margin, etc." in this paragraph and Article 220-2, paragraph (1)) required to be deposited by the customer for the transaction:

- (a) an indication that there is a possibility that the amount of trading will exceed the amount of the clearing margin, etc.;
  - (b) the ratio of the amount of trading to the amount of clearing margin, etc. (if this ratio cannot be calculated, an indication of this and the reason therefor).
  - (ii) an indication that there is a risk of the customer incurring a loss in relation to the transactions under the commodity transaction contract due to fluctuation in the quotations on the commodity market, or fluctuation of price of commodities or commodity indices, and if there is also a risk that the amount of the loss will exceed the amount of clearing margin, etc., an indication of this;
  - (iii) beyond what is provided for in the preceding two items, particulars concerning the commodity transaction contract which are specified by Cabinet Order as material particulars that affect the decision of the customer;
  - (iv) beyond what is provided for in the preceding three items, an outline of the commodity transaction contract and other particulars specified by order of the competent ministry.
- (2) With the consent of the customer and pursuant to the provisions of Cabinet Order, in lieu of delivering a document under the provisions of the preceding paragraph, a commodity derivatives business operator may provide the customer with the particulars that are required to be stated in that document by means of using an electronic data processing system or by any other means of using information communications technology which is specified by order of the competent ministry. In such a case, the commodity derivatives business operator that provides the customer with the particulars that are required to be stated in the document by those means is deemed to have delivered the document.

(Obligation of Explanation and Liability for Damages of Commodity Derivatives Business Operators)

Article 218 (1) When a commodity derivatives business operator seeks to conclude a commodity transaction contract, they must explain the particulars set forth in the items of paragraph (1) of the preceding Article to the customer in advance, pursuant to the provisions of order of the competent ministry.

(2) The explanation referred to in the preceding paragraph must be provided in a

manner and to the extent necessary for the explanation to be understood by the customer in light of the customer's knowledge, experience, status of property, or the purpose of concluding the commodity transaction contract.

- (3) Notwithstanding the provisions of the provisions of paragraph (1) or the main clause of Article 240-18, paragraph (1), if a commodity derivatives intermediary service provider has been entrusted with one commodity transaction contract by two or more commodity derivatives business operators or a commodity derivatives business operator (hereinafter individually referred to as a "commodity derivatives business operator, etc." in this paragraph), and they are required to provide an explanation about the particulars set forth in each item of paragraph (1) of the preceding Article to the customer pursuant to the provisions of paragraph (1) or the main clause of Article 240-18, paragraph (1), if either of the commodity derivatives business operator, etc. provides an explanation about those particulars, the other commodity derivatives business operator, etc. is not required to explain those particulars; provided however, that this does not apply if the other commodity derivatives business operator, etc. is a person specified by Cabinet Order.
- (4) When a commodity derivatives business operator must provide an explanation to a customer pursuant to the provisions of paragraph (1), if the business operator violates the provisions of Article 214 (limited to the part related to item (i)) or fails to explain the particulars set forth in paragraph (1), items (i) through (iii) of the preceding Article, they are liable to compensate for any damage that arises in relation to the commodity transaction contract of the customer due to the failure.

(Obligation to Clarify the Conditions of Transactions in Advance)

Article 219 (1) Before a commodity derivatives business operator seeks to conclude a commodity transaction contract, they must clarify which of the categories of transactions referred to in the items of Article 2, paragraph (22) the acts they will perform for the customer fall under.

- (2) When taking an order for an over-the-counter commodity derivatives transaction from a customer, a commodity derivatives business operator must clearly indicate to the customer in advance whether the commodity derivatives business operator will close the transaction as the counterparty to the customer or will act as an intermediary, broker, or agent to close the transaction.

(Notice of Closing of a Transaction)

Article 220 (1) When a transaction under a commodity transaction contract is closed, the commodity derivatives business operator must notify the entrustor, etc. of the volume and the amount of consideration or the contract price, etc.,

and the closing date for each type of transaction that has been closed, and of any other particulars specified by order of the competent ministry in writing without delay; provided, however, that this does not apply in the cases that are specified by order of the competent ministry as those in which, in consideration of the content of the commodity transaction contract and other circumstances, it is found that even if the document is not delivered to the entrustor, etc., this does not compromise the public interest or the protection of entrustors, etc.

(2) The provisions of Article 217, paragraph (2) apply mutatis mutandis to a notice in writing under the provisions of the preceding paragraph. In such a case, in paragraph (2) of that Article, the term "customer" is deemed to be replaced with "entrustor, etc.", the phrase "provide the customer with" is deemed to be replaced with "notify the entrustor, etc. of", the phrase "provides the customer with" is deemed to be replaced with "notifies the entrustor, etc. of", and the phrase "deemed to have delivered the document" is deemed to be replaced with "deemed to have given the notice in writing".

(Delivery of Documents Regarding the Receipt of a Clearing Margin)

Article 220-2 (1) When a commodity derivatives business operator receives a deposit of clearing margin, etc. in relation to their commodity derivatives business which an entrustor, etc. is required to deposit, they must immediately deliver a document stating the fact to the entrustor, etc., pursuant to the provisions of order of the competent ministry.

(2) The provisions of Article 217, paragraph (2) apply mutatis mutandis to the delivery of a document under the provisions of the preceding paragraph. In such a case, the term "customer" in paragraph (2) of that Article is deemed to be replaced with "entrustor, etc."

(Application, Mutatis Mutandis of the Act on Sales of Financial Instruments)

Article 220-3 The provisions of Article 6 through 9 of the Act on Sales of Financial Instruments (Act No. 101 of 2000) apply mutatis mutandis to the conclusion of a commodity transaction contract by a commodity derivatives business operator. In such a case, the term "the preceding Article" in Article 6, paragraph (1) of that Act is deemed to be replaced with "Article 218, paragraph (4) of the Commodity Derivatives Transaction Act"; the phrase "failure of the financial instruments provider, etc. to explain important matters or due to providing a conclusive evaluation, etc." in that paragraph and Article 7 of that Act is deemed to be replaced with "violation of the provisions of Article 214 of the Commodity Derivatives Transaction Act (limited to the part related to item (i)) or failure to explain the particulars set forth in Article 217, paragraph (1), items (i) through (iii) of that Act"; and the phrase "contract regarding the sale of the financial product" in Article 9, paragraph (2), item (i) of that Act is

deemed to be replaced with "commodity transaction contract"; and any other necessary technical replacement of terms is specified by Cabinet Order.

(Exemption from Application of Prohibited Acts)

Article 220-4 (1) The provisions set forth in each of the following items do not apply if the person specified in that item is an eligible consignor; provided, however, that this does not apply to cases specified by order of the competent ministry as those likely to compromise the public interest or the protection of eligible consignors:

- (i) the provisions of Article 213-2, Article 214, items (v), (vii), and (ix), and Article 215: the person to which the commodity derivatives business operator conducts the solicitation referred to in one of Article 200, paragraph (1), items (ii) through (vi); and
- (ii) the provisions of Article 209, Article 214, item (viii), and Article 217 through the preceding Article: the person from which the commodity derivatives business operator receives the offer for a commodity transaction contract or with which the commodity derivatives business operator concludes the commodity transaction contract.

(2) The provisions set forth in each of the following items do not apply if the person specified in that item is an eligible commercial person; provided, however, that this does not apply to cases specified by order of the competent ministry as being likely to harm the public interest or the protection of eligible commercial persons:

- (i) the provisions of Article 213-2, Article 214, items (v), (vii), and (ix), and Article 215: the person to which the commodity derivatives business operator conducts a solicitation referred to in one of Article 200, paragraph (1), items (ii) through (vi); and
- (ii) the provisions of Article 209, Article 214, item (viii), and Article 217 through the preceding Article: the person from which the commodity derivatives business operator receives an offer for a commodity transaction contract or with which the commodity derivatives business operator concludes a commodity transaction contract.

(Liability Reserves for Commodity Trading)

Article 221 (1) A commodity derivatives business operator must set aside a liability reserve for commodity trading based on the transaction volume of commodity derivatives transactions, pursuant to the provisions of order of the competent ministry.

(2) The liability reserves for commodity trading referred to in the preceding paragraph must not be used for cases other than allocating to cover a loss that arises due to problematic conduct concerning an act set forth in one of the

items of Article 2, paragraph (22), which is specified by order of the competent ministry; provided, however, that this does not apply if the approval of the competent minister has been obtained.

(Preparation of Books)

Article 222 A commodity derivatives business operator must prepare and preserve books for commodity derivatives transactions pursuant to the provisions of order of the competent ministry.

(Separate Accounting in Books)

Article 223 A commodity derivatives business operator must separate the accounting for transactions on its own account and for transactions on the entrustor's accounts in its books, pursuant to the provisions of order of the competent ministry, in respect of transactions in a commodity market and foreign commodity market transactions.

(Submission of Written Reports)

Article 224 (1) A commodity derivatives business operator must prepare a business report for each business year and submit it to the competent minister within three months from the end of each business year, pursuant to the provisions of order of the competent ministry.

(2) In addition to the business report prescribed in the preceding paragraph, a commodity derivatives business operator must submit a written report on the commodity derivatives business and the status of the property of the commodity derivatives business operator to the competent minister, pursuant to the provisions of order of the competent ministry.

#### **Section 4 Mergers, Company Splits, and Business Transfers**

(Mergers and Company Splits)

Article 225 (1) In the case of a merger in which commodity derivatives business operator are all or part of the parties (excluding if the entity surviving the merger between a corporation that is a commodity derivatives business operator and a corporation that is not a commodity derivatives business operator is the corporation that is a commodity derivatives business operator) or a company split (limited those in which the whole or part of commodity derivatives business is succeeded to), the corporation surviving the merger or incorporated in the merger, or the corporation succeeding to the commodity derivatives business as a result of the company split succeeds to the status of commodity derivatives business operator, if the authorization of the competent minister has been obtained for the merger or company split.

- (2) A commodity derivatives business operator seeking to obtain the authorization referred to in the preceding paragraph must submit a written application stating the particulars set forth in the items of Article 192, paragraph (1) concerning the corporation surviving the merger or incorporated in the merger (hereinafter referred to as "surviving corporation after merger" in this Article) or the corporation that succeeds to the whole or part of the commodity derivatives business (hereinafter referred to as "succeeding corporation in a company split" in this Article) to the competent minister.
- (3) The written merger agreement or company split agreement and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.
- (4) The competent minister must not grant the authorization referred to in paragraph (1) unless the minister finds that the application for the authorization referred to in that paragraph conforms to all of the following items:
  - (i) the surviving corporation after merger or the succeeding corporation a company split satisfies the requirements set forth in the items of Article 193, paragraph (1);
  - (ii) it is fully expected that the commodity derivatives business will be succeeded to in a smooth and appropriate manner.

Article 226 Deleted

Article 227 Deleted

(Business Transfers)

- Article 228 (1) If a commodity derivatives business operator transfers the whole or part of their commodity derivatives business, the transferee succeeds to the status of a commodity derivatives business operator, provided that the transferor and the transferee have obtained the authorization of the competent minister for the transfer and acquisition.
- (2) A commodity derivatives business operator seeking to obtain the authorization referred to in the preceding paragraph must submit a written application stating the particulars set forth in the items of Article 192, paragraph (1) concerning the person acquiring the whole or part of their commodity derivatives business in the business transfer to the competent minister.
  - (3) The written transfer agreement and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.
  - (4) The competent minister must not grant the authorization referred to in



paragraph (1) unless the minister finds that the application for the authorization referred to in that paragraph conforms to all of the following items:

- (i) the transferee company satisfies the requirements set forth in the items of Article 193, paragraph (1);
- (ii) it is fully expected that the commodity derivatives business will be succeeded to in a smooth and appropriate manner.

(Disposition Procedures)

Article 229 The provisions of Article 15, paragraphs (5) through (9) apply *mutatis mutandis* to the authorization referred to in Article 225, paragraph (1) and paragraph (1) of the preceding Article.

(Delegation to Cabinet Order)

Article 230 Beyond what is provided for in this Act, necessary particulars related to the merger, company split, or business transfer of a commodity derivatives business operator are specified by Cabinet Order.

## **Section 5 Supervision**

(Collection of Reports and On-Site Inspections)

- Article 231 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a commodity derivatives business operator to submit reports or materials that should serve as a reference on their business or assets, or may have ministry officials enter the business office or office of a commodity derivatives business operator to inspect their books and documents or any other article related to their business.
- (2) When the competent minister finds it particularly necessary for the enforcement of this Act, the minister may order a person conducting transactions with a commodity derivatives business operator to submit reports or materials that should serve as a reference on the business or assets of the commodity derivatives business operator.
- (3) If an on-site inspection is conducted pursuant to the provisions of paragraph (1), and the official find it necessary in order to achieve the purpose of the inspection to inspect the listed commodity that the commodity derivatives business operator owns or that has been deposited with the business operator which is stored at a place other than their business office or office, the official may have the commodity derivatives business operator present a document certifying the storage of the listed commodity to the manager of that place, and enter the place and inspect the listed commodity in the presence of the commodity derivatives business operator.

(4) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the on-site inspection under the provisions of paragraph (1) and the preceding paragraph.

(Business Improvement Orders)

Article 232 (1) If the competent minister finds it to be necessary and appropriate for maintaining order in a commodity market or for the protection of entrustors, etc., the minister, to the extent necessary, may order a commodity derivatives business operator to take measures necessary for improving the state of their property or the operation of their commodity derivatives business.

(2) In the case referred to in the preceding paragraph, if the competent minister finds that the status of the property of the commodity derivatives business operator or the operation of their commodity derivatives business falls under any of the following items, the minister, to the extent necessary, may order the commodity derivatives business operator to suspend the transactions in the commodity market or the commodity derivatives business for a fixed period not exceeding three months:

- (i) if the ratio of the total amount of liabilities to the amount of net assets exceeds the ratio specified by order of the competent ministry;
- (ii) if the ratio of the total amount of current assets to the total amount of current liabilities falls below the ratio specified by order of the competent ministry; and
- (iii) beyond what is set forth in the preceding two items, in the case specified by order of the competent ministry as a case in which it is necessary to order the suspension of transactions in the commodity market or the commodity derivatives business in order to rectify the status of property or the operation of commodity derivatives business.

(3) The total amount of liabilities referred to in item (i) of the preceding paragraph and the total amount of current assets and the total amount of current liabilities referred to in item (ii) of that paragraph must be calculated pursuant to the provisions of order of the competent ministry.

(4) The provisions of Article 99, paragraph (7) apply mutatis mutandis to the amount of net assets referred to in paragraph (2), item (i).

(Recommendations)

Article 233 If the competent minister finds it to be necessary for ensuring sound execution of the commodity derivatives business of a commodity derivatives business operator, the minister may recommend that the commodity derivatives business operator take the necessary measures for its concurrent business or the business of the corporation over which the commodity derivatives business operator has a controlling interest prescribed in Article

196, paragraph (2).

(Retention of Assets in Japan)

Article 234 If the competent minister finds it to be necessary and appropriate for maintaining order in a commodity market or for the protection of entrustors, etc., the minister may order a commodity derivatives business operator to retain the part of its assets specified by Cabinet Order in Japan.

(Order Concerning Net Assets Regulation Ratio)

Article 235 (1) If a commodity derivatives business operator is in violation of the provisions of Article 211, paragraph (2), and the competent minister finds it to be necessary and appropriate for protecting entrustors, etc., the minister, to the extent necessary, may order the business operator to change the business methods of commodity derivatives business, to deposit its property, or to take other measures necessary for supervision.

(2) If a commodity derivatives business operator is in violation of Article 211, paragraph (2) (limited to if the net assets regulation ratio is below 100 percent), and the competent minister finds it to be necessary and appropriate for protecting entrustors, etc., the minister, to the extent necessary, may order the commodity derivatives business operator to suspend their commodity derivatives business for a fixed period not exceeding three months.

(3) If the competent minister orders the suspension of commodity derivatives business pursuant to the provisions of the preceding paragraph, and the minister finds that the net assets regulation ratio of the commodity derivatives business operator on the day when three months have elapsed since the day of the order continues to be below 100 percent and that the status of the net assets regulation ratio of the commodity derivatives business operator is not likely to recover, the minister may revoke the commodity derivatives business operator's license under Article 190, paragraph (1).

(Supervisory Dispositions)

Article 236 (1) If a commodity derivatives business operator falls under any of the following items, the competent minister may revoke the commodity derivatives business operator's license under Article 190, paragraph (1) and order the suspension of transactions in the commodity market or the commodity derivatives business for a fixed period not exceeding six months:

(i) the business operator has come to fall under one of Article 15, paragraph (2), item (i), sub-item (c), (d) (limited to the part related to the revocation of the license referred to in Article 332, paragraph (1) or Article 342, paragraph (1) and the part related to the provisions of a foreign law or regulation that is equivalent to this Act), (e), (i), or (l);

- (ii) the business operator no longer conforms to Article 193, paragraph (1), item (i);
  - (iii) the amount of the business operator's net assets has fallen below the amount specified by order of the competent ministry as referred to in Article 193, paragraph (2);
  - (iv) the business operator has obtained the license referred to in Article 190, paragraph (1) by wrongful means;
  - (v) the business operator has violated this Act (excluding Article 211, paragraph (2)), an order based on this Act, or a disposition made by the competent minister based on this Act, or the conditions attached to the license referred to in Article 190, paragraph (1);
  - (vi) the business operator has failed to commence commodity derivatives business within three months from the day on which it became possible to commence the business, or they have continuously suspended business for three months or more without legitimate grounds; or
  - (vii) there is a risk that the business operator will become insolvent, in light of the state of its business or property.
- (2) If an officer of a commodity derivatives business operator performs an act that falls under item (v) of the preceding paragraph, the competent minister may order the commodity derivatives business operator to dismiss the officer.

(Application, Mutatis Mutandis of Special Provisions on the Method of Conducting Hearings)

Article 237 The provisions of Article 158, paragraph (2) apply mutatis mutandis to the disposition under the provisions of Article 232, paragraph (1) or paragraph (2), or the preceding three Articles and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of a license or an order to dismiss an officer under the provisions of Article 235, paragraph (3) or the preceding Article.

(Completion of Settlement of Transactions)

Article 238 (1) The provisions of Article 197, paragraph (5) apply mutatis mutandis to the person that was a commodity derivatives business operator in the case the commodity derivatives business operator has come to fall under one of the following items:

- (i) the business operator's license under Article 190, paragraph (1) is revoked pursuant to the provisions of Article 235, paragraph (3) or Article 236, paragraph (1);
- (ii) the business operator's license under Article 190, paragraph (1) has ceased to be effective pursuant to the provisions of Article 190, paragraph (2) or Article 197, paragraph (2) (limited to the part related to paragraph (1), items

- (i) through (iv) of that Article (with regard to item (ii) of that paragraph, limited to the part related to the merger when the corporation surviving the merger or the corporation incorporated in the merger does not conduct commodity derivatives business)).
- (2) The person that was the commodity derivatives business operator in the case set forth in the items of the preceding paragraph is deemed to be a commodity derivatives business operator, to the extent required to close the commodity derivative transactions on the account of the entrustors, etc.
- (3) Notwithstanding the provisions of paragraph (1), if a commodity exchange finds it to be inappropriate to have the commodity derivatives business operator complete the settlement of transactions in a commodity market for ensuring the fairness of transactions on a commodity market or protecting entrustors, the commodity exchange must have another member, etc. (limited to another member, etc. that is able to conduct transactions in the commodity market; hereinafter the same applies in this Article) complete the settlement of those transactions, pursuant to the provisions of its articles of incorporation (operational rules for a incorporated commodity exchange).
- (4) If a commodity exchange has another member, etc. complete the settlement of transactions pursuant to the provisions of the preceding paragraph, an entrustment agreement is deemed to be established between that member, etc. and entrustor of the transactions.

(Supervision of Non-Member Commodity Derivatives Business Operators)

Article 239 The competent minister must appropriately supervise the business of a commodity derivatives business operator that has not joined an association or that is not a member, etc. of a commodity exchange, taking into account of the articles of incorporation and any other rules of the association or the commodity exchange, so that their business does not disrupt the order in the commodity market or fails to protect the entrustors, etc.

(Respecting the Voluntary Efforts of Commodity Derivatives Business Operators)

Article 240 In supervising a commodity derivatives business operator, the competent minister must give consideration to respect the voluntary efforts of the commodity derivatives business operator to operate their business.

**Chapter IV-2 Commodity Derivatives Intermediary Service Provider**  
**Section 1 General Provisions**

(Registration)

Article 240-2 (1) Notwithstanding the provisions of Article 190, paragraph (1), a

person that is registered by the competent minister may engage in commodity derivatives intermediation services.

- (2) The registration referred to in the preceding paragraph ceases to be effective upon the expiration of the registration period, unless it is renewed every six years.

(Application for Registration)

Article 240-3 (1) A person seeking the registration referred to in paragraph (1) of the preceding Article must submit a written application for registration stating the following particulars to the competent minister:

- (i) the name or trade name of the applicant;
- (ii) if the applicant is a corporation, the names of the officers;
- (iii) the name and location of the business office or office at which the commodity derivatives intermediation services are conducted;
- (iv) the trade name or name of the commodity derivatives business operator to which transactions are entrusted (hereinafter referred to as "entrusting commodity derivatives business operator" in this Chapter and the following Chapter);
- (v) if the applicant conducts other business, the category of that business; and
- (vi) other particulars specified by order of the competent ministry.

(2) The following documents must be attached to the written application for registration referred to in the preceding paragraph:

- (i) a document pledging that the applicant does not fall under Article 240-5, paragraph (1), item (i) or (ii);
- (ii) if the applicant is a corporation, the articles of incorporation and certificate of registered information (including documents equivalent to them); and
- (iii) other documents specified by order of the competent ministry.

(Registration in a Register)

Article 240-4 (1) When an application is filed for the registration referred to in Article 240-2, paragraph (1), the competent minister must register the following particulars in the commodity derivatives intermediary service provider register, unless the minister refuses the registration pursuant to the provisions the following Article:

- (i) the particulars set forth in the items of paragraph (1) of the preceding Article; and
- (ii) the date of registration and the registration number.

(2) The competent minister must make the commodity derivatives intermediary service provider register available for public inspection.

(Refusal of Registration)

Article 240-5 The competent minister must refuse the registration of a registration applicant if the applicant falls under any of the following items, or if the written application or documents that are required to be attached to the written application contain a false statement about a material particular or lacks a statement of a material fact:

- (i) a person falling under one of the persons referred to in Article 31, paragraph (1), items (i) through (iii), if the registration applicant is an individual;
- (ii) a person falling under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (c) through (e), sub-item (i), or sub-item (l), if the registration applicant is a corporation;
- (iii) a person whose other business is found to be contrary to the public interest;
- (iv) a person that is found not to have the knowledge and experience to properly conduct commodity derivatives intermediation services;
- (v) the registration applicant has any entrusting commodity derivatives business operator that is not a member of the Commodity Futures Association; or
- (vi) a commodity derivatives business operator.

(Notification of Changes)

Article 240-6 (1) If a particular set forth in one of the items of Article 240-3, paragraph (1) or any other particular specified by order of the competent ministry changes, a commodity derivatives intermediary service provider must submit a written notification indicating this to the competent minister within two weeks from the day of the change.

- (2) When the competent minister accepts a notification under the provisions of the preceding paragraph, the minister must register the particulars notified in the commodity derivatives intermediary service provider register.
- (3) The documents specified by order of the competent ministry must be attached to the written notification referred to in paragraph (1).

(Notification of Discontinuation of Business)

Article 240-7 (1) If a commodity derivatives intermediary service provider comes to fall under any of the following items, the person specified in that item must notify the competent minister of this within 30 days from that day:

- (i) the commodity derivatives intermediary service provider discontinues commodity derivatives intermediation services: the commodity derivatives intermediary service provider;
- (ii) the commodity derivatives intermediary service provider that is an individual dies: the heir;
- (iii) the commodity derivatives intermediary service provider that is a

- corporation has disappeared in a merger: the officer that represented the corporation;
- (iv) the commodity derivatives intermediary service provider that is a corporation has dissolved due to an order of commencement of bankruptcy proceedings: the bankruptcy trustee;
  - (v) the commodity derivatives intermediary service provider that is a corporation has dissolved due to reasons other than a merger or an order of commencement of bankruptcy proceedings: the liquidator;
  - (vi) the commodity derivatives intermediary service provider has all of their commodity derivatives intermediation service succeeded to in a company split: the commodity derivatives intermediary service provider; or
  - (vii) the commodity derivatives intermediary service provider transfers all of their commodity derivatives intermediation services: the commodity derivatives intermediary service provider.
- (2) If a commodity derivatives intermediary service provider comes to fall under any of the items of the preceding paragraph, or no longer has an entrusting commodity derivatives business operator, or obtains the license referred to in Article 190, paragraph (1), the commodity derivatives intermediary service provider's registration under Article 240-2, paragraph (1) loses its effect.

(Restriction on the Use of Trade Names)

Article 240-8 A person that is not a commodity derivatives intermediary service provider must not use a word in their trade name or name which could give rise to the misconception that they are a commodity derivatives intermediary service provider.

## **Section 2 Services**

(Posting of Signs)

- Article 240-9 (1) A commodity derivatives intermediary service provider must post a sign designated by order of the competent ministry in a conspicuous place at each business office or office.
- (2) A person other than a commodity derivatives intermediary service provider must not post the sign referred to in the preceding paragraph or a sign similar to the sign.

(Prohibition of Lending One's Name)

Article 240-10 A commodity derivatives intermediary service provider must not have another person engage in commodity derivatives intermediation services using their name.



(Application, Mutatis Mutandis)

Article 240-11 The provisions of Articles 200 through 208 apply mutatis mutandis to commodity derivatives intermediary service providers. In such a case, the necessary technical replacement of terms is specified by Cabinet Order.

(Principle of Honesty and Fairness)

Article 240-12 A commodity derivatives intermediary service provider and their officers and employees must provide their services to customers with honesty and fairness.

(Regulation of Advertising)

Article 240-13 (1) When advertising the content of their commodity derivatives intermediation service or performing any similar acts specified by order of the competent ministry, a commodity derivatives intermediary service provider must indicate the following particulars pursuant to the provisions of order of the competent ministry:

- (i) the name or trade name of the commodity derivatives intermediary service provider;
- (ii) the fact that the commodity derivatives intermediary service provider is a commodity derivatives intermediary service provider and their registration number;
- (iii) the particulars concerning the content of the commodity derivatives intermediation services conducted by the commodity derivatives intermediary service provider which are specified by Cabinet Order as material particulars that would affect the decision of customers.

(2) When advertising the content of their commodity derivatives intermediation services or performing any similar act specified by order of the competent ministry, a commodity derivatives intermediary service provider must not make an indication that is significantly contradictory to the facts or particularly misleading about the prospect of profiting from conducting a commodity derivatives transaction, or about the particulars specified by order of the competent ministry.

(Clear Indication of Trade Name)

Article 240-14 If a commodity derivatives intermediary service provider seeks to perform intermediation set forth in the items of Article 2, paragraph (22) (hereinafter referred to as "acts of commodity derivatives intermediary services" in this Chapter), they must clearly indicate the following particulars to the customers in advance:

- (i) the trade name or the name of the entrusting commodity derivatives

- business operator;
- (ii) the fact that the commodity derivatives intermediary service provider does not have the authority to represent the entrusting commodity derivatives business operator;
- (iii) the purport of the provisions of the following Article; and
- (iv) other particulars provided by order of the competent ministry.

(Prohibition of Deposit of Money)

Article 240-15 A commodity derivatives intermediary service provider must not, for any reason, receive a deposit of money or securities from a customer, or have a person specified by Cabinet Order as being closely related to the commodity derivatives intermediary service provider deposit customer's money or securities, with regard to their commodity derivatives intermediation services.

(Prohibited Acts)

Article 240-16 A commodity derivatives intermediary service provider must not perform any of the following acts:

- (i) performing any of the following acts in relation to commodity derivatives intermediation services:
  - (a) an act that falls under the act referred to in Article 214, paragraph (1), item (i);
  - (b) an act that falls under the act referred to in Article 214, paragraph (1), item (ii);
  - (c) an act that falls under the act referred to in Article 214, paragraph (1), items (v) through (ix); and
  - (d) when conducting business under a commodity investment advisory contract, an act of soliciting a customer by using information about a commodity investment (meaning commodity investment prescribed in Article 2, paragraph (1) of the Act on Regulation of Business Regarding Commodity Investment) that the service provider is making for another customer;
- (ii) an act of conducting a transaction in a commodity market (excluding commodity clearing transactions), a foreign commodity market transaction, or an over-the-counter commodity derivatives transaction on its own account, using the trend of orders in commodity derivatives transactions made by customers for the service provider's commodity derivatives intermediation services or other special information learned in conducting commodity derivatives intermediation services;
- (iii) beyond what is set forth in the preceding two items, acts of commodity derivatives intermediary services which are specified by order of the

competent ministry as acts that compromise the protection of entrustors, etc. or that are likely to harm the fairness of transactions.

(Application, Mutatis Mutandis of Provisions on Commodity Derivatives

Business Operator in Relation to the Prohibition of Compensation of Loss)

Article 240-17 The provisions of Article 214-3, paragraphs (1), (3) and (5), and Article 215 apply mutatis mutandis to commodity derivatives intermediary service providers; the provisions of Article 214-3, paragraphs (2) and (4) apply mutatis mutandis to the customers of a commodity derivatives intermediary service provider. In such a case, the term "the commodity derivatives business operator" in paragraph (3) of that Article is deemed to be replaced with "an entrusting commodity derivatives business operator of the commodity derivatives intermediary service provider", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Obligation of Explanation and Liability for Damages of Commodity

Derivatives Intermediary Service Providers)

Article 240-18 (1) If a commodity derivatives intermediary service provider seeks to perform acts of commodity derivatives intermediary services, they must explain the particulars set forth in the items of Article 217, paragraph (1) to the customer in advance, pursuant to the provisions of order of the competent ministry; provided, however, that this does not apply if the explanation is not required pursuant to the provisions of Article 218, paragraph (3).

(2) The explanation referred to in the preceding paragraph must be provided in a manner and to the extent necessary for the explanation to be understood by the customer in light of the customer's knowledge, experience, status of property, or the purpose of concluding the customer's commodity transaction contract.

(3) If a commodity derivatives intermediary service provider is required to give an explanation to a customer pursuant to the provisions of paragraph (1), and the service provider has violated the provisions of Article 240-16 (limited to the part related to item (i), (a)) or has failed to explain the particulars set forth in Article 217, paragraph (1), items (i) through (iii), they are liable to compensate for any damage that arises in relation to the customer's commodity transaction contract due to the violation or failure.

(Application, Mutatis Mutandis of the Act on Sales of Financial Products)

Article 240-19 The provisions of Articles 6 through 9 of the Act on Sales of Financial Products apply mutatis mutandis to the acts of commodity derivatives intermediary services performed by a commodity derivatives intermediary service provider. In such a case, the term "the preceding Article" in Article 6, paragraph (1) of that Act is deemed to be replaced with "Article

240-18, paragraph (3) of the Commodity Derivatives Transaction Act", the phrase "failure of the financial instruments provider, etc. to explain important matters or due to providing conclusive evaluation, etc." in that paragraph and Article 7 of that Act is deemed to be replaced with "violation of the provisions of Article 240-16 of the Commodity Derivatives Transaction Act (limited to the part related to item (i), (a)) or failure to explain the particulars set forth in Article 217, paragraph (1), items (i) through (iii) of that Act", the phrase "contract regarding the sale of the financial product" in Article 9, paragraph (2), item (i) of that Act is deemed to be replaced with "commodity transaction contract", and any other necessary technical replacement of terms is specified by Cabinet Order.

(Preparation of Books)

Article 240-20 A commodity derivatives intermediary service provider must prepare and preserve books related to commodity derivatives intermediation services pursuant to the provisions of order of the competent ministry.

(Submission of Written Reports)

Article 240-21 A commodity derivatives intermediary service provider must prepare a business report for each business year and submit it to the competent minister within three months from the end of each business year, pursuant to the provisions of order of the competent ministry.

### **Section 3 Supervision**

(Collection of Reports and On-Site Inspections)

- Article 240-22 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a commodity derivatives intermediary service provider to submit reports or materials that should serve as a reference on their business, or may have ministry officials enter the office or a business office of a commodity derivatives intermediary service provider to inspect their books and documents or any other article related to their business.
- (2) If the competent minister finds it to be particularly necessary for the enforcement of this Act, the minister may order a person that conducts a transaction with a commodity derivatives intermediary service provider to submit reports or materials that should serve as a reference on the business of the commodity derivatives intermediary service provider.
- (3) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the on-site inspection under the provisions of paragraph (1).

(Supervisory Dispositions)

Article 240-23 (1) If a commodity derivatives intermediary service provider falls under any of the following items, the competent minister may revoke the commodity derivatives intermediary service provider's registration under Article 240-2, paragraph (1), order the suspension of all or part of their commodity derivatives intermediation services for a fixed period not exceeding six months, or order other particulars necessary for supervision:

- (i) if the service provider comes to fall under any of Article 15, paragraph (2), item (i), sub-item (c), (d) (limited to the part related to the provisions of a foreign law or regulation that is equivalent to this Act), (e), (i), or (l);
  - (ii) if the service provider obtains the registration referred to in Article 240-2, paragraph (1) by wrongful means; or
  - (iii) if the service provider violates this Act, an order based on this Act, or a disposition made by the competent minister based on this Act.
- (2) If the officer of a commodity derivatives intermediary service provider performs an act that falls under item (iii) of the preceding paragraph, the competent minister may order the commodity derivatives intermediary service provider to dismiss the officer.

(Deletion of Registration)

Article 240-24 If a registration referred to in Article 240-2, paragraph (1) loses its effect pursuant to the provisions of Article 240-7, paragraph (2), or the competent minister revokes a registration referred to in Article 240-2, paragraph (1) pursuant to the provisions of paragraph (1) of the preceding Article, the competent minister must delete the registration.

(Application, Mutatis Mutandis)

Article 240-25 The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the registration referred to in Article 240-2, paragraph (1), the provisions of Article 158, paragraph (2) apply mutatis mutandis to the disposition under the provisions of Article 240-23, the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of registration or an order to dismiss an officer under the provisions of Article 240-23, and the provisions of Article 240 apply mutatis mutandis to commodity derivatives intermediary service providers. In such a case, the phrase "not to conform to one of the items of paragraph (1) or to fall under one of the items of paragraph (2)" in Article 15, paragraph (5) is deemed to be replaced with "to fall under one of the items of Article 240-5".

#### **Section 4 Miscellaneous Provisions**

(Entrusting Commodity Derivatives Business Operators' Liability for

Damages)

Article 240-26 The entrusting commodity derivatives business operator of a commodity derivatives intermediary service provider is liable to compensate for damages caused to a customer in relation to the commodity derivatives intermediation services performed by the commodity derivatives intermediary service provider to which they have entrusted the services; provided, however, that this does not apply if the entrusting commodity derivatives business operator has exercised due care in entrusting the commodity derivatives intermediary service provider with those services, and has endeavored to prevent the damage that the intermediary service provider causes to the customer in relation to the acts of commodity derivatives intermediary services that the intermediary service provider performs.

## **Chapter V Commodity Futures Association**

### **Section 1 General Provisions**

(Purpose and Legal Personality)

Article 241 (1) The purpose of a commodity futures association (hereinafter referred to as an "association" in this Chapter and Chapter VIII) is to achieve a fair and smooth execution of commodity derivatives transactions, etc. (meaning acts set forth in the items of Article 2, paragraph (22); hereinafter the same applies in this Chapter) and to protect the consignors, etc.

(2) An association is to be a corporation.

(Restriction on Business)

Article 242 (1) An association must not engage in business for profit.

(2) An association must not engage in business other than the business directly necessary for achieving its purpose and business incidental thereto.

(Address)

Article 243 The address of an association is the address at which its principal office is located.

(Name)

Article 244 (1) A person that is not an association must not use a word in its name which could give rise to the misconception that it is a commodity futures association.

(2) A person that has not joined an association must not use a word in its name which could give rise to the misconception that it is a member of a commodity futures Association (hereinafter referred to as an "association member" in this Chapter).

## Section 2 Establishment

(Authorization for Establishment)

Article 245 Before seeking to establish an association, a commodity derivatives business operator must obtain the authorization of the competent minister.

(Particulars Required to be Stated in the Articles of Incorporation)

Article 246 The following particulars must be stated in the articles of incorporation of an association:

- (i) the purpose;
- (ii) its name;
- (iii) its office address;
- (iv) the particulars concerning association membership qualification;
- (v) the particulars concerning joining and withdrawing of association members;
- (vi) the particulars concerning the sharing of costs among association members;
- (vii) the particulars concerning audits of and sanctions against association members;
- (viii) the particulars concerning the fixed number, term of office, appointment, and composition of officers;
- (ix) the particulars related to improvement of the qualities of the officers and employees of association members as well as the officers and employees of commodity derivatives intermediary service providers (limited to commodity derivatives intermediary service providers whose association members are entrusting commodity derivatives business operators; hereinafter the same applies in this Chapter);
- (x) the particulars concerning the general meeting of association members;
- (xi) the particulars concerning board of directors meeting and other meetings
- (xii) the particulars concerning arbitration and conciliation of disputes arising between association members or between an association member or a commodity derivatives intermediary service provider and a customer in relation to commodity derivatives transactions, etc. and resolution of any other disputes;
- (xiii) the particulars concerning accounting and assets; and
- (xiv) the means of public notice.

(Application for Authorization)

Article 247 (1) A person seeking to obtain the authorization referred to in Article 245 must submit a written application stating the following particulars to the competent minister:

- (i) the name;
  - (ii) the office address;
  - (iii) the names and addresses of their officers and the trade names of the association members.
- (2) The articles of incorporation, sanction rules, dispute resolution rules, and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Criteria for Authorization)

Article 248 (1) If the competent minister finds that an application for the authorization referred to in Article 245 conforms to the following criteria, the minister must grant the authorization:

- (i) the provisions of the articles of incorporation, sanction rules, dispute resolution rules, and other rules do not violate laws and regulations, and the business methods, qualification of association members, and other particulars specified in the articles of incorporation, sanction rules, or dispute resolution rules are appropriate and sufficient for ensuring fair and smooth commodity derivatives transactions, etc. and for protecting the entrustors, etc.;
  - (ii) the association which the application concerns is to be organized in a manner that conforms to the provisions of this Act;
  - (iii) the written application or documents that are required to be attached to the written application contain no false statement about a material particular;
  - (iv) the applicant for authorization is not a person that falls under any of the persons referred to in Article 15, paragraph (2), item (i), sub-items (c) through (e), or sub-item (i) or (l);
  - (v) no person that falls under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) is among the officers;
- (2) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the authorization referred to in Article 245.

(Registration)

- Article 249 (1) An association must be registered pursuant to the provisions of Cabinet Order.
- (2) An association is established by registering its establishment at the locality of its principal office.
- (3) The particulars that must be registered pursuant to the provisions of paragraph (1) may not be asserted against a third party until after the registration.



(Changes in the Articles of Incorporation)

- Article 250 (1) A change in the articles of incorporation, sanction rules, or dispute resolution rules of an association does not become effective without the authorization of the competent minister.
- (2) If an association seeks to obtain the authorization referred to in the preceding paragraph, it must submit a written application by attaching the documents specified by order of the competent ministry to the competent minister.
- (3) If a particular set forth in Article 247, paragraph (1), item (ii) or (iii) changes, the association must notify the competent minister of this without delay. The same applies if an association prepares, changes, or abolishes its rules (other than the articles of incorporation, sanction rules, and dispute resolution rules).
- (4) The provisions of Article 248, paragraph (1), item (i) apply mutatis mutandis to the authorization referred to in paragraph (1).

### **Section 3 Association Members**

(Association Membership Qualification)

- Article 251 (1) commodity derivatives business operators are the only persons that are qualified to become association members.
- (2) Except in the case set forth in paragraph (5), an association must specify in its articles of incorporation that any commodity derivatives business operator may join the association as an association member.
- (3) An association must specify in its articles of incorporation that it will endeavor to prevent any fraudulent act, act of manipulating quotations, collection of unreasonable fees and costs, or other acts of unfair profiting by association members and commodity derivatives intermediary service providers, and promote the principle of good faith in transactions.
- (4) An association must specify in its articles of incorporation that it will endeavor to prevent acts that violate laws and regulations or the articles of incorporation or other rules of the association and secure entrustors' trust, by having association members develop internal rules and the administrative structure of the association members and the commodity derivatives intermediary service providers that have the association members as entrusting commodity derivatives business operators, in order for the association members to comply with laws and regulations, and the articles of incorporation and other rules of the association.
- (5) An association may specify in its articles of incorporation that if a person that has been ordered to suspend transactions in a commodity market or commodity derivatives business or has been expelled from an association or a commodity exchange or has become subject to a disposition of the revocation of trading qualification as a result of violating this Act, an order based on this Act, or a

disposition made by the competent minister based on this Act, or of violating the articles of incorporation or other rules of an association or a commodity exchange or performing an act that is contrary to the principle of good faith in transactions, the association may refuse membership of the person.

(Public Inspection of the Register)

Article 252 An association must make its register of association members available for public inspection.

(Sanction Rules)

Article 253 An association must specify in its articles of incorporation that if an association member or a commodity derivatives intermediary service provider that has an entrusting commodity derivatives business operator as an association member violates this Act, an order based on this Act, or a disposition made by the competent minister based on this Act, violates the articles of incorporation, sanction rules, or other rules of an association or a commodity exchange, or performs an act that is contrary to the principle of good faith in transactions, the association will impose a monetary sanction on the association member, order the suspension or restriction of the rights of the association member prescribed in the articles of incorporation, or expel the association member pursuant to the provisions of the sanction rules.

## **Section 4 Organ**

(Officers)

Article 254 An association has one president, two or more directors, and two or more auditors as its officers.

(Authority of the President and Directors)

Article 255 (1) The president represents the association and presides over its affairs.

(2) A director, pursuant to the provisions of the articles of incorporation, represents the association, assists the president in administering the affairs of the association, acts as a proxy in handling the duties of the president in if the president is unavailable, and performs the duties of the president if the position is vacant.

(Authority of the Auditors)

Article 256 (1) The auditors audit the affairs of the association.

(2) An auditor may request the president or a director to give a report about the affairs or examine the state of the affairs or property of the association, at any

time.

- (3) An auditor must inspect the documents that the president seeks to submit to a general meeting of association members, and report their opinions to the general meeting of association members.

(Disqualifying Conditions for Officers)

Article 257 The provisions of Article 49 apply mutatis mutandis to the officers of an association.

(Provisional Director or Provisional Auditor)

Article 258 If there is no person to perform the duties of a director or an auditor and the competent minister finds it to be necessary, the minister may appoint a provisional director or provisional auditor.

## **Section 5 Dispute Resolution**

(Complaint Resolution)

- Article 259 (1) If the customer, etc. of an association member or a commodity derivatives intermediary service provider files for the resolution of a complaint related to the business conducted by that association member or commodity derivatives intermediary service provider, the association must provide consultation, provide necessary advice to the requester, and investigate the circumstances of the complaint, as well as notify the association member or commodity derivatives intermediary service provider of the content of the complaint and demand the association member or service provider to process the complaint expeditiously.
- (2) If an association finds it to be necessary for resolving the complaint which a request referred to in the preceding paragraph concerns, it may demand the association member or commodity derivatives intermediary service provider to provide a written or oral explanation or to submit materials.
  - (3) If an association member or commodity derivatives intermediary service provider has received a demand under the provisions of the preceding paragraph from the association, they must not refuse the demand without legitimate grounds for doing so.
  - (4) An association must fully inform its association members or commodity derivatives intermediary service provider about any request referred to in paragraph (1), the circumstances which the complaint concerns, and the outcome of the resolution.

(Arbitration and Conciliation Committee)

Article 260 An association must specify in its dispute resolution rules that it will

establish an arbitration and conciliation committee (referred to as a "committee" in the following Article) comprising of committee members with relevant expertise in futures transactions and satisfying other requirements specified by order of the competent ministry, for the purpose of conducting arbitration and conciliation of dispute that arises between association members or between an association member or a commodity derivatives intermediary service provider and their customer in relation to a commodity derivatives transaction, etc. (referred to as a "dispute about a commodity derivatives transaction, etc." in the following Article).

#### (Implementation of Arbitration and Conciliation)

- Article 261 (1) If an association member, commodity derivatives intermediary service provider, or customer who is a party to a dispute about a commodity derivatives transaction, etc. makes a request for arbitration or conciliation, the association is to conduct arbitration or conciliation by the committee without delay, pursuant to the provisions of its dispute resolution rules.
- (2) An association must specify detailed regulations concerning the following particulars in its dispute resolution rules:
- (i) the procedures for requesting arbitration and conciliation;
  - (ii) the method of arbitration and conciliation; and
  - (iii) beyond what is set forth in the preceding two items, the necessary particulars for arbitration and conciliation.
- (3) If it is necessary for the smooth implementation of arbitration and conciliation, an association may demand a commodity exchange to submit materials or to provide other necessary cooperation.

### **Section 6 Dissolution**

- Article 262 (1) An association is to dissolve due to the following grounds:
- (i) an occurrence of grounds for dissolution specified by the articles of incorporation;
  - (ii) a resolution of a general meeting of association members;
  - (iii) an order of commencement of bankruptcy proceedings; or
  - (iv) a revocation of authorization for establishment.
- (2) If an association is dissolved pursuant to the provisions of items (i) through (iii) of the preceding paragraph, the association must notify the competent minister of this without delay.
- (3) Beyond what is provided for in the preceding two paragraphs, necessary particulars for the dissolution of an association are specified by Cabinet Order.

### **Section 7 Supervision**

(Collection of Reports and On-Site Inspections)

Article 263 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order an association or an association member to submit reports or materials that should serve as a reference on its business or property, or may have ministry officials enter the office or business office of an association or association member and inspect their books and documents or any other article related to business.

(2) The provisions of Article 157, paragraphs (4) and (5) apply *mutatis mutandis* to the inspection under the provisions of the preceding paragraph.

(Business Improvement Orders)

Article 264 If the competent minister finds it to be necessary and appropriate for achieving fair and smooth commodity derivatives transactions, etc. or for the protection of entrustors, etc., the minister may, to the extent necessary, order an association to change its articles of incorporation, sanction rules, dispute resolution rules, or other rules, or to take other measures necessary for improving its business operations.

(Supervisory Dispositions for Associations)

Article 265 (1) If an association violates this Act, an order based on this Act, a disposition made by the competent minister based on this Act, its articles of incorporation, or other rules (hereinafter referred to as "this Act, etc." in this Article) or, if, even though an association member or commodity derivatives intermediary service provider has violated this Act, etc., the association fails to exercise the powers granted under this Act, an order based on this Act, or its articles of incorporation, or fails to take other necessary measures to have the association member or commodity derivatives intermediary service provider observe this Act, etc., and the competent minister finds it to be necessary and appropriate for achieving fair and smooth commodity derivatives transactions, etc. or for the protection of entrustors, etc., the minister may revoke the association's authorization for the establishment, order the suspension of all or a part of its business for a fixed period not exceeding one year, order prohibition of its business in part, or order the dismissal of its officer.

(2) If the competent minister discovers that a written application for the authorization referred to in Article 245 or Article 250, paragraph (1) or its attached document that contains a false statement about a material particular or lacks a statement of a material fact, the minister may revoke the authorization.

(3) If the competent minister discovers that a person has become the officer of an association by wrongful means or if the officer of an association has violated

this Act, an order based on this Act, or a disposition made by the competent minister based on this Act, the minister may order the association to dismiss the officer.

(Application, Mutatis Mutandis of Special Provisions on the Method of Conducting Hearings)

Article 266 The provisions of Article 158, paragraph (2) apply mutatis mutandis to the dispositions under the provisions of the the preceding two Articles and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of authorization or on an order to dismiss an officer under the provisions of the preceding Article.

## **Section 8 Miscellaneous Provisions**

(Duty of Confidentiality of Officers and Employees of an Association)

Article 267 It is prohibited for the officer or employee of an association, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the course of duty.

(Submission of Business Summary Reports)

Article 268 An association must submit the following documents to the competent minister within three months from the day on which each business year begins:

- (i) a business summary report for the previous business year and the business plan for the relevant business year;
- (ii) the inventory of property as of the end of the previous business year;
- (iii) the income and expenditure statement for the previous business year and the budget statements for the relevant business year.

## **Chapter VI Consignor Protection Funds**

### **Section 1 General Provisions**

(General Consignors)

Article 269 (1) The term "general consignor" as used in this Chapter means the customer of the domestic business office or office of a commodity derivatives business operator (limited to commodity derivatives business operator performing the acts set forth in Article 2, paragraph (22), item (i) or (ii) in the course of trade, at a business office or office in Japan; hereinafter the same applies in the Chapter) that entrusts the commodity derivatives business operator with a transaction in a commodity market, etc. (excluding a commodity clearing transaction; the same applies in the following paragraph)

(excluding a commodity derivatives business operator, a qualified institutional investor prescribed in Article 2, paragraph (3), item (i) of the Financial Instruments and Exchange Act, a commodities investment advisor, and other persons specified by Cabinet Order).

(2) Notwithstanding the provisions of the preceding paragraph, if one commodity derivatives business operator entrusts another commodity derivatives business operator with a transaction in a commodity market, etc. (limited to one set forth in Article 2, paragraph (21), item (i) or (iii)) on its general consignor's account, the commodity derivatives business operator is deemed to be the general consignor of the other commodity derivatives business operator, and the provisions of this Chapter apply.

(Purpose)

Article 270 The purpose of a consignor protection fund is to protect consignors by making payments to general consignors pursuant to the provisions of Article 306, paragraph (1) and through other services, thereby maintaining the credibility of commodity markets.

(Legal Personality and Address)

Article 271 (1) A consignor protection fund is to be a corporation.

(2) The address of a consignor protection fund is to be at the locality of its principal office.

(Name)

Article 272 (1) A consignor protection fund must use the characters "委託者保護基金" (with a pronunciation of "itakusha hogo kikin", and with the literal meaning of "consignor protection fund") in its name.

(2) A person that is not a consignor protection fund must not use the characters "委託者保護基金" in its name.

(Registration)

Article 273 (1) A consignor protection fund must be registered pursuant to the provisions of Cabinet Order.

(2) The particulars that are required to be registered pursuant to the provisions of the preceding paragraph may not be asserted against a third party until after their registration.

(Capacity in Respect of Tortious Acts)

Article 274 A consignor protection fund is liable to compensate for damages that its president or directors caused to another person in the performance of their duties.

## Section 2 Members

### (Qualification of Members)

Article 275 (1) Commodity derivatives business operators are the only persons that are qualified to become members of a consignor protection fund.

(2) If a commodity derivative business operator seeks to join a consignor protection fund, the consignor protection fund must not refuse membership or attach unreasonable conditions to membership, unless membership is restricted based on legitimate grounds.

### (Obligation to Join)

Article 276 (1) A commodity derivatives business operator must join any one of the consignor protection fund as a member.

(2) A person seeking to engage in commodity derivatives business after obtaining the license under Article 190, paragraph (1) (limited to a person seeking to perform an act set forth in Article 2, paragraph (22), item (i) or (ii) in the course of trade at a domestic business office or office), or a person seeking to perform an act set forth in Article 2, paragraph (22), item (i) or (ii) in the course of trade at a business office or office in Japan by giving a notification referred to in Article 195, paragraph (1), item (i) (limited to a notification related to Article 192, paragraph (1), item (v)) (limited to a person that is not a member of a consignor protection fund) must take the procedures for joining any one of the consignor protection funds before filing the application for the license or giving the notification.

(3) A person that has taken the procedures for joining a consignor protection fund pursuant to the provisions of the preceding paragraph becomes a member of the consignor protection fund at the time the license referred to in that paragraph is granted or the notification referred to in that paragraph is accepted.

(4) When a commodity derivatives business operator joins a consignor protection fund or changes the consignor protection funds they belong to, they must notify the competent minister of this without delay.

### (Withdrawal)

Article 277 (1) A commodity derivatives business operator that is a member of a consignor protection fund withdraws from the consignor protection fund they belong to for the following reasons, as a matter of course:

- (i) revocation of their license under Article 190, paragraph (1) pursuant to the provisions of Article 235, paragraph (3) or Article 236, paragraph (1);
- (ii) expiration of their license under Article 190, paragraph (1) pursuant to the



- provisions of Article 190, paragraph (2) or Article 197, paragraph (2).
- (2) A commodity derivatives business operator may not withdraw from the consignor protection fund they belong to except in the following cases:
- (i) the withdrawal is for a reason set forth in one of the items of the preceding paragraph;
  - (ii) they submit the notification referred to in Article 195, paragraph (1), item (ii);
  - (iii) they become a member of another consignor protection fund with the approval of the competent minister.
- (3) A person that withdraws from a consignor protection fund for the reason set forth in either item (i) or (ii) of the preceding paragraph is deemed to continue to be a commodity derivatives business operator that is a member of the consignor protection fund for the purpose of the application of the provisions of Articles 302 through 311.
- (4) Even if a commodity derivatives business operator withdraws from a consignor protection fund they belong to (excluding a case of withdrawal pursuant to the provisions of paragraph (1)), they incur the obligation to pay the amount calculated by the consignor protection fund pursuant to the provisions of the operational rules as the amount of expenses that the withdrawn commodity derivatives business operator should bear out of the amount of the expenses required for the services (limited to services referred to in Article 306, paragraph (1) and Article 308, paragraph (1)) that the consignor protection fund provides for a commodity derivatives business operator that has come to fall under one of the items of Article 303, paragraph (1) or the items of paragraph (3) of that Article before the commodity derivatives business operator withdrew from the consignor protection fund.
- (5) When an application for the approval referred to in paragraph (2), item (iii) is filed, the competent minister must not grant the approval unless the application satisfies the following requirements:
- (i) the commodity derivatives business operator has repaid in full the obligation it bears as a member to the consignor protection fund from which they seek to withdraw, by the time of filing the application for approval, and their performance of the obligation prescribed in the preceding paragraph is expected to be reliable; and
  - (ii) the commodity derivatives business operator has taken the procedures for joining another consignor protection fund as a member.

### **Section 3 Establishment**

(Requirements for Establishment)

Article 278 (1) In order to establish a consignor protection fund, 20 or more

commodity derivatives business operators that seek to become its members must become the founders.

- (2) After preparing the articles of incorporation and operational rules, the founders must invite persons to become members and hold an organizational meeting and issue public notice of the articles of incorporation and the operational rules together with the time and place of the meeting by two weeks prior to the day of the organizational meeting.
- (3) Approval of the articles of incorporation and operational rules and decisions about other particulars that are necessary for the establishment of the consignor protection fund must be adopted by a resolution of the organizational meeting.
- (4) The articles of incorporation and operational rules may be amended at an organizational meeting.
- (5) The proceedings of an organizational meeting pursuant to the provisions of paragraph (3) are decided by at least a two-thirds majority of the votes of those present, at a meeting in which at least half of the commodity derivatives business operators that have proposed that they will become members to the founders before the opening of the organizational meeting (hereinafter referred to as an "expected member" in this Article) and the founders are present.
- (6) Notwithstanding the provisions of Article 292, paragraph (2), the particulars that are necessary for the business operations in the business year that includes the day of the establishment of a consignor protection fund (including the budget and funding plans) may be decided by a resolution of the organizational meeting.
- (7) The provisions of the main clause of Article 295 apply mutatis mutandis to the proceedings of the organizational meeting under the provisions of the preceding paragraph. In such a case, the term "all members" in the main clause of that Article is deemed to be replaced with "the commodity derivatives business operator that have proposed they will become members to the founders before the opening of the organizational meeting and the founders".
- (8) Each of the expected members holds an equal voting right for the organizational meeting.
- (9) An expected member not attending an organizational meeting may vote in writing or by proxy.
- (10) The provisions of the preceding two paragraphs do not apply if otherwise provided for in the articles of incorporation.
- (11) If a resolution of an organizational meeting concerns the relationship between the consignor protection fund and a specific expected member, that expected member has no voting right.

(Application for Authorization)

Article 279 (1) The founders must obtain approval for establishment by submitting a written application for authorization stating the following particulars to the competent minister, without delay after the conclusion of the organizational meeting:

(i) the name;

(ii) the amount of net assets;

(iii) the office address;

(iv) the names and addresses of the officers and the trade names of the members.

(2) The articles of incorporation, operational rules, and documents specified by order of the competent ministry must be attached to the written application for authorization referred to in the preceding paragraph.

(3) The provisions of Article 99, paragraph (7) apply mutatis mutandis to the amount of net assets referred to in paragraph (1), item (ii).

(Criteria for Authorization)

Article 280 (1) If the competent minister finds that the application for authorization referred to in paragraph (1) of the preceding Article conforms to all of the criteria set forth in the following items, the minister must grant authorization for establishment:

(i) the procedures for establishment and the content of the articles of incorporation and operational rules conform to laws and regulations;

(ii) the written application for authorization, the articles of incorporation, and the operational rules contain no false statements;

(iii) no person falling under one of the persons referred to in Article 15, paragraph (2), item (i), sub-items (a) through (k) is among the officers;

(iv) the amount of net assets is three billion yen or more;

(v) it is found that the business operations will certainly be conducted in an appropriate manner;

(vi) the organization of the consignor protection fund which the application concerns conforms to the provisions of this Act.

(2) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the authorization referred to in paragraph (1) of the preceding Article.

(Transfer of Affairs to the President)

Article 281 Upon obtaining authorization for establishment, the founders must hand over the affairs of the consignor protection fund to the president without delay.

(Registration)

- Article 282 (1) A consignor protection fund is established by registering its establishment at the locality of its principal office.
- (2) When the registration of establishment referred to in the preceding paragraph has been made, the consignor protection fund must notify the competent minister of this without delay.

#### **Section 4 Management**

(Particulars Required to be Stated in the Articles of Incorporation)

- Article 283 (1) The following particulars must be stated in the articles of incorporation of a consignor protection fund:
- (i) the purpose;
  - (ii) the name;
  - (iii) the location of its office;
  - (iv) the following particulars concerning its members:
    - (a) qualification as a member;
    - (b) joining and withdrawing as a member;
    - (c) audits of and sanctions against members.
  - (v) the particulars concerning its general meetings;
  - (vi) the particulars concerning its officers;
  - (vii) the particulars concerning the governing council;
  - (viii) the particulars concerning finance and accounting;
  - (ix) the particulars concerning changes to the articles of incorporation;
  - (x) the particulars concerning dissolution; and
  - (xi) the means of public notice.
- (2) A change to the articles of incorporation does not come into effect without the authorization of the competent minister.
- (3) If a particular set forth in Article 279, paragraph (1), item (iv) changes, the consignor protection fund must notify the competent minister of this without delay.

(Officers)

- Article 284 A consignor protection fund has one president, two or more directors, and one or more auditors as officers.

(Authority of the Officers)

- Article 285 (1) The president represents the consignor protection fund and presides over its affairs.
- (2) A director, pursuant to the provisions of the articles of incorporation, represents the consignor protection fund, assists the president in administering the affairs of the consignor protection fund, acts as a proxy in

handling the duties of the president if the president is unavailable, and performs the duties of the president if the position is vacant.

- (3) The execution of the business of a consignor protection fund is decided by a majority vote of the president and directors, unless otherwise specified by the articles of incorporation.
- (4) An auditor audits the affairs of a consignor protection fund.
- (5) An auditor may submit opinions to the president or the competent minister based on the result of an audit, if the auditor finds this to be necessary.
- (6) An officer loses the position of officer upon coming to fall under one of Article 15, paragraph (2), item (i), sub-items (a) through (k).

(Appointment, Term of Office, and Dismissal of Officers)

Article 286 (1) Officers are appointed and dismissed at a general meeting pursuant to the provisions of the articles of incorporation; provided, however, that the officers at the time of establishment are appointed at the organizational meeting.

- (2) The appointment (excluding the appointment of the officers at the time of establishment) and dismissal of the officers of a consignor protection fund under the provisions of the preceding paragraph does not come into effect without the authorization of the competent minister.
- (3) The term of office of an officer is a period of not more than two years specified by the articles of incorporation.
- (4) An officer may be reappointed.
- (5) If an officer is found to have become an officer through wrongful means, or if an officer has violated a law or regulation, a disposition by a government agency based on a law or regulation, or the articles of incorporation, the competent minister may order the consignor protection fund to dismiss the officer.

(Prohibition on the Concurrent Holding of Positions by Auditors)

Article 287 An auditor must not concurrently hold the position of president, director, member of the governing council, or employee of the consignor protection fund.

(Restriction on the Representative Authority)

Article 288 The president and a director has no representative authority with respect to any matter in which the interests of the consignor protection fund conflict with those of the president or the directors. In such a case, an auditor represents the consignor protection fund.

(Provisional Directors and Provisional Auditors)

Article 289 If there is no person to perform the duties of a director or an auditor and the competent minister finds it to be necessary, the minister may appoint a provisional director or provisional auditor.

(General Meetings)

Article 290 (1) The president must convene an ordinary general meeting once every business year, pursuant to the provisions of the articles of incorporation.

(2) The president may convene an extraordinary general meeting when the president finds this to be necessary.

(3) When the convocation of a general meeting has been requested by at least one-fifth of all members by presenting the subject matter of the meeting, the president must convene an extraordinary general meeting; provided, however, that a proportion other than one-fifth of the members may be specified in the articles of incorporation.

(Convocation of a General Meeting)

Article 291 A convocation notice for a general meeting (meaning an ordinary general meeting referred to in paragraph (1) of the preceding Article or an extraordinary general meeting referred to in paragraph (2) of that Article; hereinafter the same applies in this Chapter) must specify the subject matter of the meeting, and must be sent by the means specified in the articles of incorporation by at least five days prior to the day of the meeting.

(Matters to be Resolved at a General Meeting)

Article 292 (1) Only matters of which advance notice is given pursuant to the provisions of the preceding Article may be resolved at a general meeting; provided, however, that this does not apply if otherwise provided for in the articles of incorporation.

(2) Beyond what is specifically provided for in this Act, the following matters require a resolution of a general meeting to be adopted:

(i) a change to the articles of incorporation;

(ii) a decision on or change to the budget or funding plan;

(iii) a change to the operational rules;

(iv) settlement of accounts;

(v) dissolution; and

(vi) beyond what is set forth in the preceding items, matters which is specified in the articles of incorporation.

(3) At a general meeting, the members may request an auditor to audit the business of the consignor protection fund and report the results.

(Voting Rights of Members)

- Article 293 (1) Each of the members holds an equal voting right.
- (2) A member not attending a general meeting may vote in writing or by proxy.
- (3) The provisions of the preceding two paragraphs do not apply if otherwise provided for in the articles of incorporation.

(When a Member Has No Voting Right)

Article 294 If a resolution concerns the relationship between the consignor protection fund and a specific member, the member has no voting right.

(Proceedings of General Meetings)

Article 295 The proceedings of a general meeting are decided by a majority vote of the attendees, at a meeting in which at least half of all members are present, and by the chairperson in the event of a tie; provided, however, that decisions of the proceedings set forth in Article 292, paragraph (2), items (i), (iii) and (v) are made by at least a two-thirds majority vote of the attending members.

(Governing Council)

- Article 296 (1) A consignor protection fund establishes a governing council in order to properly conduct its business.
- (2) In the following cases, the president must hear the opinion of the governing council in advance:
- (i) when making a certification pursuant to the provisions of Article 304;
  - (ii) when specifying the matters that are required to be specified pursuant to the provisions of Article 305, paragraph (1);
  - (iii) when deciding whether or not to provide a loan under the provisions of Article 308, paragraph (4); and
  - (iv) when deciding other material particulars related to the operation of the business of the consignor protection fund.
- (3) A governing council is composed of not more than eight members.
- (4) The members are appointed by the president from among the persons with relevant expertise necessary to properly operate the business of the consignor protection fund, with the authorization of the competent minister.

(Appointment of Employees)

Article 297 The employees of a consignor protection fund are appointed by the president.

(Duty of Confidentiality of the Officers and Employees)

Article 298 (1) It is prohibited for the officer or employee of a consignor protection fund, a member of the governing council, or a person that has held one of these positions, to divulge or misappropriate any secret learned in the

course of duty.

- (2) It is prohibited for the officer or employee of a consignor protection fund, a member of the governing council, or a person that has held one of these positions, to use information learned in the course of duty for a purpose other than for the business of the consignor protection fund.

(Position of Officers and Employees)

Article 299 With regard to the application of the Penal Code (Act No. 45 of 1907) and other penal provisions, the officers and employees of a consignor protection fund and the members of the governing council are deemed to be officials engaged in public service pursuant to laws and regulations.

## **Section 5 Businesses**

(Scope of Businesses)

Article 300 A consignor protection fund performs the following businesses in order to achieve the purpose prescribed in Article 270:

- (i) making payments to general consignors pursuant to the provisions of Article 306, paragraph (1);
- (ii) lending of funds pursuant to the provisions of Article 308, paragraph (1);
- (iii) acceptance and management of deposits of the property subject to preservation pursuant to the provisions of Article 309;
- (iv) business that contribute to the expeditious repayment of liabilities of general consignors prescribed in Article 310;
- (v) acts in and out of court prescribed in Article 311, paragraph (1);
- (vi) the collection and management of dues (meaning dues prescribed in Article 277, paragraph (4) and Article 314, paragraph (1); the same applies in paragraph (1), item (ii) of the following Article);
- (vii) business incidental to the business set forth in the preceding items.

(Operational Rules)

Article 301 (1) The operational rules of a consignor protection fund must state the following particulars:

- (i) the particulars concerning the businesses and their execution;
  - (ii) the particulars concerning the dues (including particulars concerning the method of calculating them and their payment); and
  - (iii) other particulars specified by order of the competent ministry.
- (2) If a consignor protection fund seeks to change its operational rules, it must obtain the authorization of the competent minister.

(Submission of Reports or Materials)



Article 302 (1) If it is necessary for conducting its business, a consignor protection fund may request a commodity derivatives business operator that is its member to submit reports or materials that should serve as a reference on the state of the business or property of the commodity derivatives business operator.

(2) A commodity derivatives business operator that has been requested to submit reports or materials that should serve as a reference on the state of their business or property pursuant to the provisions of the preceding paragraph must submit the reports or materials without delay.

(3) At the request of a consignor protection fund, the competent minister may issue materials to the consignor protection fund or have the consignor protection fund inspect them, if the minister finds that this is particularly necessary in order for the consignor protection fund to conduct business.

(Notice to a Consignor Protection Fund)

Article 303 (1) If a commodity derivatives business operator that is the member of a consignor protection fund falls under one of the following items, the business operator must immediately notify the consignor protection fund they belong to of this:

(i) when their license under Article 190, paragraph (1) is revoked pursuant to the provisions of Article 235, paragraph (3) or Article 236, paragraph (1);

(ii) when their license under Article 190, paragraph (1) has ceased to be effective pursuant to the provisions of paragraph (2) of that Article;

(iii) when they file a petition to commence bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings, or special liquidation;

(iv) when they discontinue commodity derivatives business (including when they discontinue performing an act set forth in Article 2, paragraph (22), item (i) or (ii) in the course of trade at all business offices and offices established in Japan) or has dissolved, or has issued public notice of the discontinuance or dissolution of commodity derivatives business pursuant to the provisions of Article 197, paragraph (3);

(v) when they become subject to an order to suspend commodity derivatives business pursuant to the provisions of Article 236, paragraph (1) (limited to a case falling under item (vii) of that paragraph); or

(vi) beyond what is set forth in the preceding items, a case which is specified by Cabinet Order as being likely to result in insufficient protection of consignors.

(2) If a consignor protection fund receives a notice under the provisions of the preceding paragraph, they must immediately report this to the competent minister.

(3) If one of the following situations occurs to a commodity derivatives business operator that is a member of a consignor protection fund, the competent

minister must immediately notify the consignor protection fund to which the commodity derivatives business operator belongs of this:

- (i) when the competent minister revokes their license under Article 190, paragraph (1) pursuant to the provisions of Article 235, paragraph (3) or Article 236, paragraph (1);
- (ii) when the competent minister orders the suspension of commodity derivatives business pursuant to the provisions of Article 236, paragraph (1) (limited to a case falling under item (vii) of that paragraph);
- (iii) when their license under Article 190, paragraph (1) ceases to be effective pursuant to the provisions of paragraph (2) of that Article; or
- (iv) in a case equivalent to the preceding three items, and the competent minister finds it to be necessary to give a notice.

(Certification of Difficulty to Repay the Liabilities of General Consignors)

Article 304 If a consignor protection fund receives a notice under the provisions of paragraph (1) or (3) of the preceding Article (including when a notice referred to in paragraph (1) of that Article is not given, but the consignor protection fund learns that its member falls under one of the items of that paragraph), it must, without delay, make a certification on whether it is difficult for the commodity derivatives business operator which the notice concerns (including a commodity derivatives business operator that the consignor protection fund has learned falls under one of the items of paragraph (1), when a notice under that paragraph is not given; hereinafter referred to as the "commodity derivatives business operator that is the subject of a notice") to smoothly repay the liabilities concerning the return of consignor assets to its general consignors (hereinafter referred to as "liabilities of general consignors" in this Chapter), unless it is found to be unlikely that not making a certification would result in insufficient protection of consignors.

(Public Notice of Certification)

- Article 305 (1) If a consignor protection fund, pursuant to the preceding Article, makes a certification that it is difficult for the commodity derivatives business operator that is the subject of a notice to smoothly repay the liabilities of general consignors, the consignor protection fund must promptly specify the period for notification and the place of notification for the request referred to in paragraph (1) of the following Article and any other particulars specified by Cabinet Order and issue public notice thereof.
- (2) If a public notice under the provisions of Article 197, paragraph (1) of the Bankruptcy Act (Act No. 75 of 2004) (including as applied mutatis mutandis pursuant to Article 209, paragraph (3) of that Act) or a notice under paragraph (5) is issued, or if any other situation specified by Cabinet Order occurs with

regard to the commodity derivatives business operator that is subject to the certification referred to in the preceding paragraph (hereinafter referred to as the "certified commodity derivatives business operator") after the consignor protection fund issues public notice pursuant to the provisions of the preceding paragraph, the consignor protection fund may change the period of notification for which public notice was given pursuant to the provisions of the preceding paragraph.

(3) If a consignor protection fund changes the period of notification pursuant to the provisions of the preceding paragraph, it must issue public notice of the particulars concerning the change without delay.

(4) If a consignor protection fund specifies the particulars prescribed in paragraph (1) or changes the period of notification pursuant to the provisions of paragraph (2), it must immediately report this to the competent minister.

(5) The bankruptcy trustee must notify the consignor protection fund when they have given the notice under the provisions of Article 197, paragraph (1) of the Bankruptcy Act (including as applied mutatis mutandis pursuant to Article 209, paragraph (3) of that Act) or Article 204, paragraph (2) of that Act or when they have obtained the permission under the provisions of Article 208, paragraph (1) of that Act concerning the bankruptcy proceedings of a certified commodity derivatives business operator.

(Payment of Claims to be Compensated)

Article 306 (1) At the request of the general consignor of a certified commodity derivatives business operator, the consignor protection fund is to pay the amount calculated pursuant to the provisions of order of the competent ministry on any claim that the general consignor has against the certified commodity derivatives business operator as of the day that the consignor protection fund has issued public notice pursuant to the provisions of paragraph (1) of the preceding Article (limited to a claim for the consignor assets of the general consignor), and which the consignor protection fund, pursuant to the provisions of Cabinet Order, finds to be difficult for the certified commodity derivatives business operator to repay smoothly (hereinafter referred to as the "claims to be compensated").

(2) Notwithstanding the provisions of the preceding paragraph, a consignor protection fund is not to make the payment referred to in that paragraph to the officer of the certified commodity derivatives business operator or any other person specified by Cabinet Order.

(3) The request referred to in paragraph (1) may only be made within the period of notification for which public notice is issued pursuant to the provisions of paragraph (1) or (3) of the preceding Article; provided, however, that this does not apply if the consignor protection fund finds there to be compelling

circumstances such as a natural disaster for the failure to make the request within the period of notification.

(Amount of Payment)

- Article 307 (1) Notwithstanding the provisions of the paragraph (1) of the preceding Article, if the general consignor of a certified commodity derivatives business operator which has made the request referred to in that paragraph has incurred an obligation to the certified commodity derivatives business operator, the amount that the consignor protection fund is required to pay pursuant to the provisions of that paragraph is equivalent to the amount arrived at when the amount of the obligation is deducted from the amount provided for in paragraph (1) of the preceding Article.
- (2) With regard to the application of the provisions of paragraph (1) of the preceding Article and the preceding paragraph, if a commodity derivatives business operator is deemed to be a general consignor pursuant to the provisions of Article 269, paragraph (2), each general consignor that has caused the commodity derivatives business operator to be deemed a general consignor has the position of a general consignor.
- (3) If the amount that is required to be paid pursuant to the provisions of paragraph (1) of the preceding Article and paragraph (1) exceeds the amount specified by Cabinet Order, the amount specified by the Cabinet Order is the amount that is required to be paid.
- (4) If a consignor protection fund makes the payment referred to in paragraph (1) of the preceding Article, it acquires a claim to be compensated related to that payment and in accordance with the amount it pays, pursuant to the provisions of Cabinet Order.

(Loans of Funds for Refunds)

- Article 308 (1) At the application of a commodity derivatives business operator that is the subject of a notice, a consignor protection fund may lend the commodity derivatives business operator that is the subject of the notice (other than a certified commodity derivatives business operator) the necessary funds for making expeditious repayment of liabilities of general consignors (hereinafter referred to as a "loan of funds for refunds") within the scope of the amount found to be necessary.
- (2) A commodity derivatives business operator that is the subject of a notice filing an application for a loan of funds for refunds must be certified by the competent minister that they satisfy all of the following requirements with regard to the loan of funds for refunds (hereinafter referred to as "certification of eligibility" in this Article), by the time it files the application:
- (i) providing a loan of funds for refunds is found to be necessary for the

- expeditious repayment of liabilities of general consignors;
- (ii) it is found to be certain that the money from a loan of funds for refunds to be used for the expeditious repayment of liabilities of general consignors.
- (3) Upon granting a certification of eligibility, the competent minister must notify the consignor protection fund to which the commodity derivatives business operator that has obtained the certification of eligibility belongs of this.
- (4) Upon receiving an application for a loan of funds for refunds from a commodity derivatives business operator that is the subject of a notice, a consignor protection fund must decide whether to provide the loan of funds for refunds which the application concerns.
- (5) When a consignor protection fund has made the decision referred to in the preceding paragraph, it must immediately report the particulars concerning the decision to the competent minister.

(Acceptance and Management of Deposits of Property Subject to Preservation)  
Article 309 A consignor protection fund may accept and manage a deposit of all or a part of the property subject to preservation from a commodity derivatives business operator that is a member, pursuant to the provisions of order of the competent ministry.

(Business for Contributing to Expeditious Repayment of Liabilities)  
Article 310 A consignor protection fund may be entrusted by a commodity derivatives business operator that is a member to conduct business as the trust administrator of the commodity derivatives business operator and any other business specified by order of the competent ministry, in order to contribute to the expeditious repayment of liabilities of general consignors.

(Preservation of the Claims of General Consignors)  
Article 311 (1) A consignor protection fund may be entrusted by the general consignor of a commodity derivatives business operator that is the subject of a notice, to conduct any and all acts in and out of court which are necessary for preserving the fulfillment of the claim that the general consignor has against the commodity derivatives business operator that is the subject of the notice (limited to a claim for the consignor assets of the general consignor) on behalf of the general consignor.

(2) A consignor protection fund must conduct the acts referred to in the preceding paragraph in a fair and sincere manner on behalf of the general consignor.

(3) A consignor protection fund must conduct the acts referred to in paragraph (1) for a general consignor with the due care of a prudent manager.

## Article 312 Deleted

### **Section 6 Dues**

#### (Funds for Consignor Protection)

- Article 313 (1) A consignor protection fund is to establish funds to be allocated to cover the costs required for the services set forth in Article 300, paragraph (1), items (i) and (ii) (hereinafter referred to as "funds for consignor protection").
- (2) The funds for consignor protection must not be used unless they are allocated to cover the costs required for the business set forth in Article 300, paragraph (1), items (i) and (ii).

#### (Dues)

- Article 314 (1) A commodity derivatives business operator must pay dues to the consignor protection fund they belong to, pursuant to the provisions of the operational rules, in order to allocate the dues to funds for consignor protection.
- (2) Notwithstanding the preceding paragraph, a consignor protection fund may exempt a commodity derivatives business operator that is the subject of a notice from paying dues, pursuant to the provisions of its operational rules.

#### (Method of Calculating the Amount of Dues)

- Article 315 (1) The amount of the dues referred to in paragraph (1) of the preceding Article is the amount calculated by the calculation method specified in the operational rules.
- (2) The method of calculating the dues referred to in the preceding paragraph must be specified so as to conform to the following criteria:
- (i) the finances of the consignor protection fund will be balanced in the long term in light of the estimated amount of costs required for the payments referred to in Article 306, paragraph (1) and the loan of funds for refunds referred to in Article 308, paragraph (1); and
  - (ii) no particular commodity derivatives business operator is to be treated in a discriminatory manner.
- (3) If a commodity derivatives business operator fails to pay dues by the due date for payment specified in the operational rules, they must pay arrears to the consignor protection fund they belong to.
- (4) The amount of arrears is calculated by multiplying the amount of unpaid dues by an annual rate of 14.5 percent, based on the number of days from the day following the due date for payment until the day of the payment.

### **Section 7 Finance and Accounting**

(Business Year and Separate Accounting)

Article 316 (1) The business year of a consignor protection fund is from April 1 to March 31 of the following year; provided, however, that the business year that includes the day of the establishment of the consignor protection fund is from the day of its establishment until the following March 31.

(2) A consignor protection fund must carry out separate accounting for each account specified by order of the competent ministry.

(Submission of Budget and Financial Plans)

Article 317 A consignor protection fund must, each business year, prepare budget and financial plans and submit them to the competent minister before the commencement of the relevant business year (with regard to the business year that includes the day of the establishment of the consignor protection fund, this means without delay after its establishment) pursuant to the provisions of order of the competent ministry. The same applies if the consignor protection fund changes the budget and financial plan.

(Submission of Financial Statements)

Article 318 (1) Within three months from the first day of a business year (excluding the business year that includes the day of establishment of the consignor protection fund), a consignor protection fund, pursuant to the provisions of order of the competent ministry, must prepare an inventory of property, balance sheet, profit and loss statement, business report, and statement of accounts (hereinafter referred to as "financial statements, etc." in this Article) for the previous business year, submit them to the competent minister, and have them approved by the minister.

(2) When a consignor protection fund submits the financial statements, etc. to the competent minister pursuant to the provisions of the preceding paragraph, an auditor's written opinion on the financial statements, etc. must be attached to them.

(3) A consignor protection fund must keep a copy of the financial statements, etc. that have been approved by the competent minister pursuant to the provisions of paragraph (1) at the office of the consignor protection fund and provide them for public inspection.

(Reserve Funds)

Article 319 (1) A consignor protection fund must set aside all of the surplus for each business year as reserve funds.

(2) The reserve funds referred to in the preceding paragraph may be allocated to cover deficits carried over from the previous business year, or may be transferred to funds for consignor protection.

(3) The reserve funds referred to in paragraph (1) must not be broken down other than for the case referred to in the preceding paragraph.

(Restrictions on Investment of Funds)

Article 320 A consignor protection fund must not invest the surplus funds that arise in the course of business or the funds for consignor protection, other than by the following means:

- (i) holding national government bonds and other securities designated by the competent minister;
- (ii) depositing them in a financial institution designated by the competent minister; or
- (iii) other means specified by order of the competent ministry.

(Delegation to Order of the Competent Ministry)

Article 321 Beyond what is provided for in this Act, necessary particulars concerning finance and accounting of a consignor protection fund are specified by order of the competent ministry.

## **Section 8 Supervision**

(Collection of Reports and On-Site Inspections)

Article 322 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a consignor protection fund or its member to submit reports or materials that should serve as a reference on their business or property, or may have ministry officials enter the office or business office of a consignor protection fund or its member and inspect their books and documents or any other article related to their business.

(2) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the inspection under the provisions of the preceding paragraph.

(Business Improvement Orders)

Article 323 If the competent minister finds it to be necessary and appropriate in the public interest or for the protection of consignors, the minister may order a consignor protection fund to change its articles of incorporation or operational rules, or issue any other order concerning its business that is necessary for supervision.

(Revocation of Approval)

Article 324 (1) If a consignor protection fund violates a law or regulation, a disposition by a government agency based on a law or regulation, or its articles of incorporation or operational rules, or if the competent minister finds that it



will be difficult for a consignor protection fund to continue its business due to the status of its business or property, and the minister finds it to be necessary and appropriate in the public interest or for the protection of consignors, the minister may revoke the authorization for establishment of the consignor protection fund.

- (2) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of the preceding Article and the preceding paragraph, and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of the authorization under the provisions of the preceding paragraph.

### **Section 9 Dissolution**

(Grounds for Dissolution)

Article 325 (1) A consignor protection fund is to dissolve due to the following grounds:

- (i) a resolution of a general meeting; and
- (ii) the revocation of authorization for establishment.

- (2) Dissolution due to the grounds set forth in item (i) of the preceding paragraph does not come into effect without the authorization of the competent minister.

(Appointment of Liquidators)

Article 326 In the case of a dissolution under the provisions of paragraph (1), item (i) of the preceding Article, a liquidator is appointed at a general meeting, and in the case of a dissolution under the provisions of item (ii) of that paragraph, a liquidator is appointed by the competent minister.

(Disposal of Residual Assets)

Article 327 (1) If there are residual assets after the payment of the obligations of a consignor protection fund, a liquidator must, pursuant to the provisions of order of the competent ministry, vest the residual assets in other consignor protection funds that the members are to join.

- (2) Beyond what is provided in the preceding paragraph, necessary measures concerning the dissolution of a consignor protection fund may be specified by Cabinet Order, to the extent considered reasonably necessary.

### **Chapter VII Miscellaneous Provisions**

(Prohibition Orders by the Court)

Article 328 (1) If the court finds it to be urgently necessary and finds it to be necessary and appropriate to protect the public interest, the court may issue

an order to prohibit the acts to a person that has performed or has attempted to perform an act in violation of this Act, at the petition of the competent minister.

- (2) The prohibition order referred to in the preceding paragraph is to be issued only when an unrecoverable situation has occurred, and the order is to be promptly revoked when it becomes no longer necessary.
- (3) The court may revoke or change an order issued pursuant to the provisions of the preceding paragraph.
- (4) The cases provided for in paragraph (1) and the preceding paragraph fall under the jurisdiction of the district court that has jurisdiction over the domicile of the respondent.
- (5) The judicial decision provided for in paragraphs (1) and (3) is rendered pursuant to the Non-Contentious Cases Procedure Act (Act No. 14 of 1898).

(Prohibition of Gambling by Quotations)

Article 329 Unless a commodity derivatives business operator or a person that has filed a notification referred to in Article 349, paragraph (1) is the other party, it is prohibited for any person to perform an act for the purpose of paying and receiving the difference between the sale price and the purchase price using quotations on a commodity market without recourse to transactions in a commodity market.

Article 330 Deleted

(Exclusion of Application of Prohibition on Establishment of Facilities Similar to a Commodity Market)

Article 331 The provisions of Article 6 do not apply to the following facilities:

- (i) a facility that meets the requirements specified by Cabinet Order as a facility in which only the following transactions for a commodity (limited to one that does not fall under a listed commodity which a public notice under the provisions of Article 352 concerns; hereinafter the same applies in this Article) or commodity index (limited to an index other than one that falls under a listed commodity index which a public notice under the provisions of that Article concerns or one that is similar to the listed commodity index; hereinafter the same applies in this Article) are conducted:
  - (a) transactions which are similar to futures transactions which a person that engages in the purchase and sale, etc. of the commodity in the course of trade for commodities conducts for their own business on their own account;
  - (b) transactions which are similar to futures transactions which a person that engages in the purchase and sale, etc. of the commodity underlying

the commodity index in the course of trade for commodity indices conducts for their own business on its own account;

- (ii) a facility prescribed in paragraph (1) of the following Article which is established by a person that has obtained a license referred to in that paragraph (referred to as the "establisher of a Type 1 Specified Facility" in Articles 334 through 341);
- (iii) a facility prescribed in Article 342, paragraph (1) which is established by a person that has obtained a license referred to in that paragraph (referred to as the "establisher of a Type 2 Specified Facility" in Articles 344 and 345).

(Permission to Establish a Facility Similar to a Type 1 Specified Commodity Market)

Article 332 (1) A person seeking to establish a facility that meets the requirements specified by Cabinet Order as a facility in which the following transactions (excluding a facility in which only the transactions set forth in items (i) and (ii) are conducted) for a commodity (limited to one that does not fall under a listed commodity which a public notice under the provisions of Article 352 concerns; hereinafter the same applies in this paragraph) or commodity index (limited to an index other than one that falls under a listed commodity index which a public notice under the provisions of that Article concerns or is similar to the listed commodity index; hereinafter the same applies in this paragraph) are conducted (hereinafter the facility is referred to as a "Facility Similar to a Type 1 Specified Commodity Market") must be licensed by the competent minister to do so:

- (i) transactions which are similar to futures transactions, and which a person that engages in the purchase and sale, etc. of the commodity in the course of trade conducts for their own business on its own account for commodities, by a method of deciding the prices and other terms of trade based on negotiations between the parties through the facility, or by other methods specified by order of the competent ministry;
  - (ii) transactions which are similar to futures transactions, and which a person that engages in the purchase and sale, etc. of a commodity underlying the commodity index in the course of trade for their own business on their own account for commodity indices conducts, by the methods prescribed in the preceding item; and
  - (iii) transactions which are similar to futures transactions, and which a bank or other persons specified by Cabinet Order conduct for their own business on their own account for commodities or commodity indices by the methods provided for in item (i).
- (2) A person seeking to obtain a license pursuant to the provisions of the preceding paragraph must submit a written application stating the following

particulars to the competent minister:

- (i) their name or trade name and address;
  - (ii) if it is a corporation, the names or trade names and addresses of the officers;
  - (iii) the commodity or commodity index underlying the transactions;
  - (iv) the method of trade;
  - (v) the names or trade names of the persons that participate in trading in the Facility Similar to a Type 1 Specified Commodity Market, for each commodity or commodity index subject to transactions (hereinafter the person is referred to as a "Type 1 Specified Facility Trading Participant" in this paragraph and the following Article);
  - (vi) if a Type 1 Specified Facility Trading Participant engages in the purchase and sale, etc. of a commodity (limited to the commodity which the application concerns or a commodity underlying the commodity index which the application concerns) in the course of trade, the commodity;
  - (vii) the date on which the Facility Similar to a Type 1 Specified Commodity Market is scheduled to be established; and
  - (viii) other particulars specified by order of the competent ministry.
- (3) The business plan and other documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Licensing Criteria)

Article 333 (1) If the competent minister finds that an application for the license referred to in paragraph (1) of the preceding Article conforms to the following criteria, the minister must grant the license:

- (i) the facility is intended for conducting only the transactions set forth in paragraph (1), items (i) through (iii) of the preceding Article;
- (ii) the commodity which the application concerns does not fall under a listed commodity which a public notice under the provisions of Article 352 concerns, or the commodity index which the application concerns is other than an index that falls under a listed commodity index under the provisions of that Article or an index similar to the listed commodity index;
- (iii) the method of trade which the application concerns conforms to the method of trade prescribed in paragraph (1), item (i) of the preceding Article;
- (iv) for each commodity underlying the transactions or for each commodity index underlying the transactions, persons that engage in the purchase and sale, etc. of the commodity in the course of trade or persons that engage in the purchase and sale, etc. of the commodity subject to the commodity index in the course of trade, account for the majority of the Type 1 Specified Facility Trading Participants; and

- (v) the content and method of business are necessary and appropriate for ensuring the public interest and the fairness of transactions.
- (2) Notwithstanding the provisions of the preceding paragraph, if an application for the license referred to in paragraph (1) of the preceding Article falls under one of the following items, the competent minister must not grant the license referred to in paragraph (1) of that Article:
  - (i) the license applicant falls under one of the persons referred to in the items of Article 31, paragraph (1);
  - (ii) the written application or documents that are required to be attached to the written application contain a false statement about a material particular.
- (3) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the license referred to in paragraph (1) of the preceding Article.

(Succession)

- Article 334 (1) If the establisher of a Type 1 Specified Facility transfers all of its business or if an inheritance, merger, or split (limited to succession of the whole business) involving the establisher of a Type 1 Specified Facility occurs, the person that acquires the whole business or an heir (if there are two or more heirs, and the heir that will succeed to the business is selected by their unanimous consent, that person; hereinafter the same applies in this Article), the corporation surviving the merger, the corporation incorporated in the merger, or the corporation that succeeds to the whole business in the split, succeeds to the status of that establisher of a Type 1 Specified Facility; provided, however, that this does not apply if the corporation surviving the merger, corporation incorporated in the merger, or corporation that succeeds to the whole business in the split falls under one of the items of Article 31, paragraph (1).
- (2) A person that succeeds to the status of an establisher of a Type 1 Specified Facility pursuant to the provisions of the preceding paragraph must notify the competent minister of this without delay.

(Permission for a Change)

- Article 335 (1) If an establisher of a Type 1 Specified Facility seeks to change a particular set forth in Article 332, paragraph (2), item (iii) or (iv), they must obtain the permission of the competent minister.
- (2) If an establisher of a Type 1 Specified Facility seeks to obtain the permission referred to in the preceding paragraph, they must submit a written application by attaching the documents specified by order of the competent ministry to the competent minister.
  - (3) If there is a change to the particulars set forth in Article 332, paragraph (2), item (i), (ii), (v), (vi), or (viii), an establisher of a Type 1 Specified Facility must

notify the competent minister of this without delay, and if they seek to make a change to the particular set forth in item (vii) of that paragraph, they must notify the competent minister of this in advance.

- (4) The provisions of Article 333 apply mutatis mutandis to the permission referred to in paragraph (1).

(Preparation of Books)

Article 336 (1) An Establisher of a Type 1 Specified Facility must prepare and preserve books for the transactions at the Facility Similar to a Type 1 Specified Commodity Market, pursuant to the provisions of order of the competent ministry.

- (2) An establisher of a Type 1 Specified Facility must report the particulars specified by order of the competent ministry regarding their business to the competent minister each month, pursuant to the provisions of order of the competent ministry.

(Notification of Closure of a Facility)

Article 337 (1) If an establisher of a Type 1 Specified Facility closes a Facility Similar to a Type 1 Specified Commodity Market, they must notify the competent minister of this without delay.

- (2) If an establisher of a Type 1 Specified Facility closes a Facility Similar to a Type 1 Specified Commodity Market, their license ceases to be effective.

(Reports and On-Site Inspections)

Article 338 (1) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order an establisher of a Type 1 Specified Facility to submit reports or materials that should serve as a reference on their business, or may have ministry officials enter the office or business office of the establisher of a Type 1 Specified Facility and inspect books and documents or any other article related to their business.

- (2) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the inspection under the provisions of the preceding paragraph.

(Business Improvement Orders)

Article 339 (1) If the competent minister finds that there is a risk of harming the interests of a person that engages in the purchase and sale, etc. of a commodity underlying the transactions in the course of trade, or a person that engages in the purchase and sale, etc. of a commodity subject to a commodity index that is underlying the transactions in the course of trade, or finds it to be necessary and appropriate in order to ensure the public interest or the fairness of transactions concerning the business operations of an establisher of a Type 1

Specified Facility, the minister may order the establisher of a Type 1 Specified Facility to take necessary measures for improving their business operations.

(2) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of the preceding paragraph.

(Revocation of License)

Article 340 (1) If an establisher of a Type 1 Specified Facility falls under any of the following items, the competent minister may revoke their license, or order the suspension of all or a part of their business for a fixed period not exceeding six months:

(i) when the establisher violates this Act, an order based on this Act, or a disposition based on this Act or the order;

(ii) when the establisher comes to fall under any of the provisions of Article 15, paragraph (2), item (i), sub-items (b) through (j) (with regard to (d) of that item, limited to the part related to the revocation of the license under Article 190, paragraph (1) or Article 342, paragraph (1), and the part related to the provisions of a foreign law or regulation that is equivalent to this Act) or the provisions of the items of Article 31, paragraph (1) (excluding item (ii));

(iii) when the establisher fails to establish a Facility Similar to Type 1 Specified Commodity Market within three months after receiving permission, or continuously suspends transactions in the facility for three months or more, without legitimate grounds for doing so;

(iv) when the establisher has obtained the license under Article 332, paragraph (1) or the permission under Article 335, paragraph (1) by wrongful means; or

(v) when a Facility Similar to a Type 1 Specified Commodity Market that the establisher has established no longer conforms to the criteria set forth in the items of Article 333, paragraph (1).

(2) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of the preceding paragraph and the provisions of Article 159, paragraph (4) apply mutatis mutandis to a hearing on the revocation of a license pursuant to the provisions of the preceding paragraph.

(Register)

Article 341 (1) The competent minister must keep a register of establishers of Type 1 Specified Facilities which states the particulars set forth in Article 332, paragraph (2), items (i), (iii), and (iv), and other particulars specified by order of the competent ministry concerning the establishers of Type 1 Specified Facilities.

(2) The competent minister must make the register of establishers of Type 1 Specified Facilities available for public inspection.

(License to Establish a Facility Similar to a Type 2 Specified Commodity Market)

Article 342 (1) A person seeking to establish a facility that meets the requirements specified by Cabinet Order as a facility in which the following transactions for a commodity (limited to one that falls under a listed commodity which a public notice under Article 352 concerns and which is specified by order of the competent ministry; hereinafter the same applies in this paragraph) or commodity index (limited to an index falling under a listed commodity index which a public notice under that Article concerns, or an index similar to the listed commodity index, which is specified by order of the competent ministry; hereinafter the same applies in this paragraph) are conducted (hereinafter the facility is referred to as a "Facility Similar to a Type 2 Specified Commodity Market") must be licensed by the competent minister:

- (i) transactions which are similar to futures transactions, and which a person that engages in the purchase and sale, etc. of a commodity in the course of trade conducts for their own business based on their own account for commodities, by a method for deciding the prices and other terms of the trade based on negotiations between the parties through the facility, or by other methods specified by order of the competent ministry;
- (ii) transactions which are similar to futures transactions, and which a person that engages in the purchase and sale, etc. of a commodity subject to the commodity index in the course of trade conducts for their own business on their own account for commodity indices, by the methods provided for in the preceding item;
- (iii) transactions which are similar to futures transactions, and which a bank or other persons specified by Cabinet Order conducts for their own business on their own account for commodities or commodity indices, by the methods provided for in item (i).

(2) A person seeking to obtain a license pursuant to the provisions of the preceding paragraph must submit a written application stating the following particulars to the competent minister:

- (i) their name or trade name and address;
- (ii) if the person is a corporation, the names or trade names and addresses of the officers;
- (iii) the commodity or commodity index underlying the transactions;
- (iv) the method of trade;
- (v) the names or trade names of the persons that participate in transactions at the Facility Similar to a Type 2 Specified Commodity Market, for each commodity or commodity index underlying the transactions (hereinafter the person is referred to as a "Type 2 Specified Facility Trading Participant" in this paragraph and the following Article);



- (vi) if a Type 2 Specified Facility Trading Participant engages in the purchase and sale, etc. of a commodity (limited to the commodity which the application concerns or the commodity subject to the commodity index which the application concerns) in the course of trade, the commodity;
  - (vii) the date on which the Facility Similar to a Type 2 Specified Commodity Market is scheduled to be established; and
  - (viii) other particulars specified by order of the competent ministry.
- (3) The business plan and documents specified by order of the competent ministry must be attached to the written application referred to in the preceding paragraph.

(Licensing Criteria)

Article 343 (1) If the competent minister finds that an application for permission referred to in paragraph (1) of the preceding Article conforms to the following criteria, the minister must grant the permission:

- (i) the facility is intended for conducting only the transactions set forth in paragraph (1), items (i) through (iii) of the preceding Article;
  - (ii) the method of trade which the application concerns conforms to the method of trade prescribed in paragraph (1), item (i) of the preceding Article;
  - (iii) there is no risk of causing a hindrance to the sound operation of a commodity exchange that lists the commodity underlying the transactions, the commodity index underlying the transactions, or a commodity index similar to the commodity index;
  - (iv) for each commodity underlying the transactions and for each commodity index underlying the transactions, persons that engage in the purchase and sale, etc. of the commodity in the course of trade or persons that engage in the purchase and sale, etc. of the commodity subject to the commodity index in the course of trade, account for the majority of the Type 2 Specified Facility Trading Participants; and
  - (v) the content and method of business are necessary and appropriate for ensuring the public interest and the fairness of transactions.
- (2) Notwithstanding the provisions of the preceding paragraph, if an application for the license referred to in paragraph (1) of the preceding Article falls under any of the following items, the competent minister must not grant the license referred to in that paragraph:
- (i) the license applicant falls under one of the provisions of the items of Article 31, paragraph (1); or
  - (ii) the written application or documents that are required to be attached to the written application contain a false statement about a material particular.
- (3) The provisions of Article 15, paragraphs (5) through (9) apply mutatis mutandis to the license referred to in paragraph (1) of the preceding Article.

(Business Improvement Orders)

Article 344 (1) If the competent minister finds that there is a risk of causing hindrance to the sound operation of a commodity exchange that lists the commodity underlying the transactions, the commodity index underlying the transactions, or a commodity index similar to the commodity index, or a risk of harming the interests of a person that engages in the purchase and sale, etc. of the commodity underlying the transactions in the course of trade or a person that engages in the purchase and sale, etc. of the commodity subject to the commodity index that is underlying the transactions in the course of trade, or if the minister finds it to be necessary and appropriate in order to ensure the public interest or the fairness of transactions concerning the business operations of the establisher of a Type 2 Specified Facility, the minister may order the establisher of a Type 2 Specified Facility to take necessary measures for improving its business operations.

(2) The provisions of Article 158, paragraph (2) apply mutatis mutandis to a disposition under the provisions of the preceding paragraph.

(Application, Mutatis Mutandis)

Article 345 The provisions of Articles 334 through 338, Article 340, and Article 341 apply mutatis mutandis to the Establisher of a Type 2 Specified Facility. In such a case, the term "Article 332, paragraph (2), item (iii) or (iv)" in Article 335, paragraph (1) is deemed to be replaced with "Article 342, paragraph (2), item (iii) or (iv)"; the term "Article 332, paragraph (2), item (i), (ii), (v), (vi), or (viii)" in paragraph (3) of that Article is deemed to be replaced with "Article 342, paragraph (2), item (i), (ii), (v), (vi), or (viii)"; the term "Article 333" in paragraph (4) of that Article is deemed to be replaced with "Article 343"; the term "Facility Similar to a Type 1 Specified Commodity Market" in Article 336, paragraph (1) and Article 337 is deemed to be replaced with "Facility Similar to a Type 2 Specified Commodity Market"; the term "Article 342, paragraph (1)" in Article 340, paragraph (1), item (ii) is deemed to be replaced with "Article 332, paragraph (1)"; the term "Facility Similar to a Type 1 Specified Commodity Market" in item (iii) of that paragraph is deemed to be replaced with "Facility Similar to a Type 2 Specified Commodity Market"; the term "Article 332, paragraph (1) or Article 335, paragraph (1)" in item (iv) of that paragraph is deemed to be replaced with "Article 342, paragraph (1) or Article 335, paragraph (1) as applied mutatis mutandis pursuant to Article 345"; the terms "Facility Similar to a Type 1 Specified Commodity Market" and "the items of Article 333, paragraph (1)" in item (v) of that paragraph are deemed to be replaced with "Facility Similar to a Type 2 Specified Commodity Market" and "the items of Article 343, paragraph (1)", respectively; the terms "Article

332, paragraph (2), items (i), (iii), and (iv)" and "register of establishers of Type 1 Specified Facilities" in Article 341, paragraph (1) are deemed to be replaced with "Article 342, paragraph (2), items (i), (iii), and (iv)" and "register of establishers of Type 2 Specified Facilities", respectively; the term "register of establishers of Type 1 Specified Facilities" in paragraph (2) of that Article is deemed to be replaced with "register of establishers of Type 2 Specified Facilities".

(Transitional Measures for the Opening of a Commodity Market)

- Article 346 (1) If a commodity or commodity index becomes a listed commodity or listed commodity index and public notice of this is issued pursuant to the provisions of Article 352, when a facility set forth in Article 331, item (i) or (ii) for that commodity or commodity index has already been opened at the time the public notice is issued and there are transactions similar to futures transactions for which settlement has not been completed at the facility, the provisions of Article 6 do not apply to the transactions similar to futures transactions which are conducted in order to settle those transactions nor to the establishment of the facility in which those transactions are conducted.
- (2) If a commodity or commodity index becomes a listed commodity (limited to a commodity prescribed in Article 342, paragraph (1)) or listed commodity index (limited to a commodity index prescribed in that paragraph) and public notice of this is issued pursuant to the provisions of Article 352, when a facility set forth in Article 331, item (ii) for that commodity or commodity index has already been opened at the time the public notice is issued, the establisher of the facility is deemed to have obtained the license referred to in Article 342, paragraph (1), limited to the period until the day on which one month has passed since the day of the public notice.
- (3) If a person that is deemed to have obtained the license referred to in Article 342, paragraph (1) pursuant to the provisions of the preceding paragraph has not obtained the license referred to in that paragraph on the day on which one month has passed since the day of the public notice, and there are transactions similar to futures transactions for which settlement has not been completed at the facility established by the person that is deemed to have obtained the license, the provisions of paragraph (1) apply mutatis mutandis to transactions similar to futures transactions which are conducted for settling those transactions and to the establishment of the facility in which those transactions are conducted.
- (4) If a commodity becomes one that does not fall under a listed commodity which a public notice under Article 352 concerns or a commodity index becomes an index other than one that falls under a listed commodity index which a public notice under that Article concerns or an index similar to the listed commodity

index and a public notice of this is issued pursuant to the provisions of that Article, when a facility set forth in Article 331, item (iii) regarding the commodity or the commodity index has already been opened at the time the public notice is issued, the establisher of the facility is deemed to have obtained the license referred to in Article 332, paragraph (1); provided, however, this does not apply if the facility falls under a facility set forth in Article 331, item (i).

(Delegation to Cabinet Order)

Article 347 In addition to what is provided for in Article 331 through the preceding Article, necessary particulars for the establishment of a Facility Similar to a Type 1 Specified Commodity Market or a Facility Similar to a Type 2 Specified Commodity Market are specified by Cabinet Order.

(Relationship with Other Laws and Regulations)

Article 348 The provisions Article 6 do not apply to a facility similar to financial futures market, and is governed by the provisions of the Financial Instruments and Exchange Act.

(Notification by a Specified Over-the-Counter Commodity Derivatives Business Operator)

Article 349 (1) A person that seeks to engage in either over-the-counter commodity derivatives transactions whose underlying commodity is a commodity that falls under a listed commodity which a public notice prescribed in Article 352 concerns, or over-the-counter commodity derivatives transactions with an underlying commodity index that falls under a listed commodity index which a public notice prescribed in that Article concerns or an underlying commodity index similar to the listed commodity index (hereinafter referred to as a "specified over-the-counter commodity derivatives transaction") in the course of trade among the out-of-scope over-the-counter commodity derivatives transactions, must notify the competent minister of the following particulars, pursuant to the provisions of order of the competent ministry. The same applies if a person that engages in specified over-the-counter commodity derivatives transactions in the course of trade (hereinafter referred to as "specified over-the-counter commodity derivatives business operator") seeks to change a particular notified to the minister.

(i) their name or trade name;

(ii) the name and location of the business office or office;

(iii) the commodity or commodity index that will be subject to the specified over-the-counter commodity derivatives transactions; and

(iv) other particulars specified by order of the competent ministry.

- (2) The competent minister must prepare a register of specified over-the-counter commodity derivatives business operators, and make it available for public inspection.
- (3) The provisions of Article 214-3, paragraphs (1), (3), and (5) apply mutatis mutandis to a specified over-the-counter commodity derivatives business operator and the provisions of paragraphs (2) and (4) of that Article apply mutatis mutandis to the customers of a specified over-the-counter commodity derivatives business operator. In such a case, the term "commodity derivatives transactions" in the items of paragraph (1) and the items of paragraph (2) of that Article is deemed to be replaced with "specified over-the-counter commodity derivatives transactions".
- (4) A specified over-the-counter commodity derivatives business operator must prepare and preserve books for specified over-the-counter commodity derivatives transactions pursuant to the provisions of order of the competent ministry.
- (5) When the competent minister finds it to be necessary for the enforcement of this Act, the minister may order a specified over-the-counter commodity derivatives business operator to submit reports or materials on their business for specified over-the-counter commodity derivatives transactions (hereinafter referred to as "specified over-the-counter commodity derivatives transactions business"), or may have ministry officials enter the office or business office of a specified over-the-counter commodity derivatives business operator and inspect the status of specified over-the-counter commodity derivatives transactions business or books and documents or any other article related to specified over-the-counter commodity derivatives transactions business.
- (6) The provisions of Article 157, paragraphs (4) and (5) apply mutatis mutandis to the on-site inspection under the provisions of the preceding paragraph.
- (7) If the competent minister finds it to be necessary and appropriate for maintaining order in a commodity market, the minister, to the extent necessary, may order a specified over-the-counter commodity derivatives business operator to take the necessary measures for improving the operation of the specified over-the-counter commodity derivatives transactions business.
- (8) If a specified over-the-counter commodity derivatives business operator violates this Act, an order based on this Act, or a disposition rendered by the competent minister based on this Act, the competent minister may order the specified over-the-counter commodity derivatives business operator to suspend all or a part of its specified over-the-counter commodity derivatives transactions business for a fixed period not exceeding three months.
- (9) If a commodity or a commodity index becomes a listed commodity or a listed commodity index and public notice of this is issued pursuant to the provisions of Article 352, a person who is conducting specified over-the-counter commodity

derivatives transactions in the course of trade for which the commodity or listed commodity index, or a commodity index similar to the listed commodity index are the subject of transactions at the time the public notice is issued, must file the notification referred to in paragraph (1) before one month passes counting from the day of the public notice.

(Cooperation in Investigations with Foreign Regulatory Authorities for Commodity Futures)

- Article 349-2 (1) If the competent minister finds it appropriate to comply with a request from a regulatory authority that is responsible for enforcing a foreign law or regulation that is equivalent to this Act (hereinafter referred to as a "foreign regulatory authority for commodity futures" in this Article) for cooperation in an administrative investigation it conducts in order to enforce a foreign law or regulation under its jurisdiction that is equivalent to this Act, the minister may order a person that conducts a commodity derivatives transaction with a counterparty in that foreign state, or any other concerned party or witness, to submit reports or materials that should serve as a reference, to the extent that is found to be necessary and appropriate in order to respond to the request.
- (2) The competent minister may not render the disposition under the provisions of the preceding paragraph in cases that fall under any of the following items:
- (i) the foreign regulatory authority for commodity futures has not given assurance that it will comply with a similar request from Japan;
  - (ii) it is found that if the disposition is rendered based on the request by the foreign regulatory authority for commodity futures, this is likely to have a material adverse impact on the fair price formation or production and distribution of commodities in Japan, or to be detrimental to Japan's interests;
  - (iii) it is found that there is a risk of the content of the report or materials submitted pursuant to the disposition under the provisions of the preceding paragraph being used for a purpose other than the purpose of contributing to the performance of its functions at the foreign regulatory authority for commodity futures.
- (3) If the request for cooperation under paragraph (1) is made for the purpose of an administrative disposition by the foreign regulatory authority for commodity futures based on a foreign law or regulation that is equivalent to this Act (limited to one that restricts the rights of the person subject to the disposition or imposes a duty on that person), the competent minister is to consult with the Minister for Foreign Affairs before complying with the request.
- (4) Appropriate measures must be taken for the reports and materials submitted pursuant to a disposition under the provisions of paragraph (1), to ensure that

their content will not be used for criminal proceedings undertaken in a court or by a judge in a foreign country.

(5) The necessary particulars for the application of the provisions of the preceding paragraphs are specified by Cabinet Order.

(Request of Expenses by Witnesses or Experts)

Article 350 A witness or an expert who is ordered to appear or provide an expert opinion pursuant to the provisions of Article 15, paragraph (9) (including as applied mutatis mutandis pursuant to Article 80, paragraph (4), Article 133, paragraph (3), Article 146, paragraph (4), Article 155, paragraph (6), Article 156, paragraph (7), Article 169, paragraph (3) (including as applied mutatis mutandis pursuant to Article 173, paragraph (4)), Article 194; Article 201, paragraph (2), Article 229, Article 240-25, Article 248, paragraph (2), Article 280, paragraph (2), Article 333, paragraph (3) (including as applied mutatis mutandis pursuant to Article 335, paragraph (4)), Article 343, paragraph (3) (including as applied mutatis mutandis pursuant to Article 335, paragraph (4) as applied mutatis mutandis pursuant to Article 345 following the deemed replacement of terms)), Article 96-22, paragraph (3) (including as applied mutatis mutandis pursuant to Article 96-22, paragraph (5), Article 96-34, paragraphs (3) and (4), Article 96-40, paragraph (5), and Article 96-43), or Article 158, paragraph (2) (including as applied mutatis mutandis pursuant to Article 159, paragraph (5), Article 160, paragraph (2), Article 187, Article 204, paragraph (3) (including as applied mutatis mutandis pursuant to Article 240-11), Article 206, paragraph (6) (including as applied mutatis mutandis pursuant to Article 240-11), Article 237, Article 240-25, Article 266, Article 324, paragraph (2), Article 339, paragraph (2), Article 340, paragraph (2) (including as applied mutatis mutandis pursuant to Article 345) and Article 344, paragraph (2)) may request travel expenses, a daily allowance, and other costs, pursuant to the provisions of Cabinet Order.

(Calculation of the Number of Founders)

Article 351 To calculate the number of founders, members, or persons who seek to become members, or trading participants prescribed in Article 10, Article 69, item (vi), Article 70, Article 80, paragraph (1), item (ii), Article 94, paragraph (1), item (iii), Article 95, or Article 155, paragraph (3), item (i), (a), a person who engages in the purchase and sale, etc. of component products of listed commodities, etc. in two or more commodity markets in the course of trade is deemed to be one person for each of the commodity markets.

(Public Notice)

Article 352 In the following cases, the competent minister must issue public

notice in the Official Gazette with regard to the particulars concerning the listed commodity or listed commodity index and any other particulars specified by order of the competent ministry, without delay:

- (i) the competent minister has made a disposition of permission or non-permission under the provisions of Article 9 or Article 78 (including as applied pursuant to Article 15, paragraph (11) (including as applied *mutatis mutandis* pursuant to Article 80, paragraph (4) and Article 146, paragraph (4)));
- (ii) the expiration date or the term for a change of scope referred to in Article 11, paragraph (4) or Article 102, paragraph (3) has passed or ended for a commodity market;
- (iii) a written application for permission is submitted pursuant to the provisions of Article 14, paragraph (1) or Article 79, paragraph (1);
- (iv) there has been a dissolution pursuant to the provisions of Article 69 (excluding a dissolution due to the grounds set forth in item (v) of that Article) or lapse of a license pursuant to the provisions of Article 94, paragraph (1);
- (v) the competent minister has made a disposition of authorization or refusing authorization pursuant to the provisions of Article 132, paragraph (1) or Article 145, paragraph (1);
- (vi) a written application for authorization under the provisions of Article 132, paragraph (2) or Article 145, paragraph (2) is submitted;
- (vii) the competent minister has made a disposition of authorization or refusing authorization under the provisions of Article 155, paragraph (1) or Article 156, paragraph (1) (limited to a disposition involving a change in the scope of a listed commodity or listed commodity index) (including as applied pursuant to Article 15, paragraph (11) as applied *mutatis mutandis* pursuant to Article 155, paragraph (6), item (ii) or Article 156, paragraph (7), item (ii));
- (viii) a written application for authorization under the provisions of Article 155, paragraph (2) or Article 156, paragraph (2) is submitted (limited to an authorization related to change of the scope (other than the abolishment or narrowing of the scope) of a listed commodity or listed commodity index);
- (ix) the competent minister has revoked the permission under Article 9 or the license under Article 78 pursuant to the provisions of Article 159, paragraph (1), item (i) or (ii), or paragraph (2); or
- (x) the competent minister has revoked the authorization to change the articles of incorporation pursuant to the provisions of Article 159, paragraph (1), item (ii) or paragraph (2) (limited to an authorization related to change of the scope of a listed commodity or a listed commodity index).

(Technical Replacement of Terms in Applying the Provisions of this Act to



Foreign Corporations)

Article 353 If a commodity derivatives business operator is a corporation established pursuant to the law or regulation of a foreign country or a person domiciled in a foreign country, the technical replacement of terms in applying the provisions of this Act to the commodity derivatives business operator and other necessary particulars for the application of the provisions of this Act are specified by Cabinet Order.

(Competent Minister, Order of the Competent Ministry, and Delegation of Authority)

Article 354 (1) The competent ministers under this Act are as follows:

- (i) the Minister of Agriculture, Forestry and Fisheries, for commodity exchanges that only operate commodity markets whose listed commodities are only commodities related to the Ministry of Agriculture, Forestry and Fisheries (meaning the commodities specified by Cabinet Order; the same applies hereinafter) or commodity markets in which the listed commodities consist only of commodity indices whose underlying goods are only commodities related to the Ministry of Agriculture, Forestry and Fisheries (hereinafter referred to as "commodity markets related to the Ministry of Agriculture, Forestry and Fisheries"); for major shareholders of incorporated commodity exchanges that only operate commodity markets related to the Ministry of Agriculture, Forestry and Fisheries (meaning those that have obtained the authorization referred to in Article 96-19, paragraph (1); hereinafter the same applies in this Article); for commodity exchange holding companies with a subsidiary company that is an incorporated commodity exchange that only operates commodity markets related to the Ministry of Agriculture, Forestry and Fisheries, and the major shareholders of the commodity exchange holding companies (meaning those that have obtained the authorization referred to in Article 96-31, paragraph (1); hereinafter in this Article the same applies); for commodity clearing organizations that only perform business of assuming commodity transaction debts for commodity markets related to the Ministry of Agriculture, Forestry and Fisheries; for establisher of Facilities Similar to Type 1 Specified Commodity Markets or Facilities Similar to Type 2 Specified Commodity Markets on which transactions are conducted only for commodities related to the Ministry of Agriculture, Forestry and Fisheries or on which transactions are conducted only for commodity indices whose only underlying goods are commodities related to the Ministry of Agriculture, Forestry and Fisheries; and for specified over-the-counter commodity derivatives business operators related to specified over-the-counter commodity derivatives transactions whose underlying goods are only commodities related to the Ministry of Agriculture,

Forestry and Fisheries;

- (ii) the Minister of Economy, Trade and Industry, for commodity exchanges that only operate commodity markets whose listed commodities are only commodities related to the Ministry of Economy, Trade and Industry (meaning commodities other than commodities related to the Ministry of Agriculture, Forestry and Fisheries; the same applies hereinafter); for commodity markets whose listed commodities are only commodity indices whose underlying goods or electric power are only commodities related to the Ministry of Economy, Trade and Industry (hereinafter referred to as "commodity markets related to the Ministry of Economy, Trade and Industry"); for major shareholders of incorporated commodity exchanges that only operate commodity markets related to the Ministry of Economy, Trade and Industry; for major shareholders of commodity exchange holding companies whose subsidiary company is an incorporated commodity exchange that only operates commodity markets related to the Ministry of Economy, Trade and Industry, and the major shareholders of the commodity exchange holding companies; for commodity clearing organizations that perform business of assuming commodity transaction debts only for commodity markets related to the Ministry of Economy, Trade and Industry; for establisher of Facilities Similar to Type 1 Specified Commodity Markets or Facilities Similar to Type 2 Specified Commodity markets in which transactions are only conducted for commodities related to the Ministry of Economy, Trade and Industry or on which transactions are only conducted for commodity indices whose only underlying goods or electric power are commodities related to the Ministry of Economy, Trade and Industry; and for specified over-the-counter commodity derivatives business operator related to specified over-the-counter commodity derivative transactions whose underlying goods are only commodities related to the Ministry of Economy, Trade and Industry;
- (iii) the Minister of Agriculture, Forestry and Fisheries, and the Minister of Economy, Trade and Industry, for commodity exchanges, major shareholders of incorporated commodity exchanges, commodity exchange holding companies, major shareholders of commodity exchange holding companies, commodity clearing organizations, establisher of Facilities Similar to Type 1 Specified Commodity Markets, establisher of Facilities Similar to Type 2 Specified Commodity Markets, and specified over-the-counter commodity derivatives business operator other than those set forth in the preceding two items, and for commodity derivatives business operators, commodity derivatives intermediary service providers, commodity futures associations, and entrustor protection funds.
- (2) The order of the competent ministry in this Act is Order of the Ministry of

Agriculture, Forestry and Fisheries or Order of the Ministry of Economy, Trade and Industry.

- (3) The competent minister may delegate a part of the authority granted pursuant to this Act to the head of a local branch bureau, pursuant to the provisions of Cabinet Order.

(Relationship with the Prime Minister)

Article 354-2 (1) Before rendering one of the following dispositions to a commodity exchange or commodity exchange holding company, the competent minister is to notify the Prime Minister of that fact:

- (i) revocation of the authorization referred to in Article 96-25, paragraph (1) or the proviso to paragraph (3) of that Article, pursuant to the provisions of Article 96-38 or Article 96-40, paragraph (1) (limited to a revocation related a commodity exchange holding company whose subsidiary company is a company engaging in the business of opening a financial instruments exchange market);
  - (ii) revocation of the authorization referred to in the proviso to paragraph (1) of Article 96-37, pursuant to the provisions of Article 96-40, paragraph (1) (limited to a revocation involving a company that is to have a company engaging in the business of opening a financial instruments exchange market as its subsidiary company);
  - (iii) revocation of the permission under Article 9 or the license under Article 78, pursuant to the provisions of Article 159, paragraph (1) or (2) (limited to a revocation involving an incorporated commodity exchange that engages in the business of opening a financial instruments market under the authorization referred to in the proviso to Article 3, paragraph (1) or the license referred to in Article 80, paragraph (1) of the Financial Instruments and Exchange Act, or a commodity exchange whose subsidiary company is a company engaging in the business of opening a financial instruments exchange market with the authorization referred to in the proviso to Article 3-2, paragraph (1));
  - (iv) revocation of the authorization referred to in the proviso to Article 3, paragraph (1) pursuant to the provisions of Article 159, paragraph (1), item (iv) (limited to a revocation involving the business of opening a financial instruments market);
  - (v) revocation of the authorization referred to in the proviso to Article 3-2, paragraph (1) pursuant to the provisions of Article 159, paragraph (1), item (v) (limited to a revocation involving a company that is to have a company engaging in the business of opening a financial instruments exchange market as its subsidiary company).
- (2) If the competent minister finds it necessary for preventing the commodity-

related market derivative transactions prescribed in Article 2, paragraph (8), item (i) of the Financial Instruments and Exchange Act from causing material adverse impact on the production and distribution of commodities, the minister may request the Prime Minister to take necessary measures based on that Act.

(Transitional Measures)

Article 355 If an order is established, amended, or repealed based on this Act, the order may provide for the necessary transitional measures (including transitional measures for penal provisions) to the extent considered reasonably necessary for the establishment, amendment, or repeal of the order.

### **Chapter VIII Penal Provisions**

Article 356 A person that falls under any of the following items is subject to punishment by imprisonment for not more than five years, a fine of not more than five million yen, or both:

- (i) a person that spreads rumors, uses fraudulent means, or resorts to physical violence, or intimidation for a transaction in a commodity market or in order to become entrusted with the transaction, or for the purpose of causing a fluctuation in quotations on a commodity market;
- (ii) a person that violates the provisions of Article 116;
- (iii) an officer (including a provisional director or provisional auditor; the same applies in the following item) of a member commodity exchange who, in soliciting persons to subscribe for shares that will be issued pursuant to the provisions of Article 129, uses a prospectus, advertisement, or other document for the subscription which contains a false statement about a material particular, or, if electronic or magnetic records are prepared in lieu of the documents, provides a person with an electronic or magnetic record that contains a false statement about a material particular, or an employee that has been given the authority to handle a certain kind of business matter or specific business matter; or
- (iv) an officer of a member commodity exchange that borrows and deposits money in order to disguise payment for shares issued pursuant to the provisions of Article 129, an employee that has been given the authority to handle a certain kind of business matter or specific business matter, or a person that complies with the borrowing and depositing of money.

Article 356-2 (1) The following property is subject to confiscation; provided, however, that if it is not appropriate to confiscate all or part of that property in light of the circumstances of its acquisition, the progress of a person's performance of compensation for damages, and other circumstances, the

property may be exempted from confiscation:

- (i) property obtained through a criminal act referred to in item (i) or (ii) of the preceding Article;
  - (ii) property obtained in exchange for the property set forth in the preceding item, or, if the property set forth in the preceding item is an option or other right, property obtained through the exercise of the right.
- (2) If it is not possible to confiscate property that is required to be confiscated pursuant to the preceding paragraph, an equivalent amount is collected from the offender.

Article 357 A person that falls under any of the following items is subject to punishment by imprisonment for not more than three years, a fine of not more than three million yen, or both:

- (i) a person that violates the provisions of Article 6, paragraph (1)
- (ii) a person that is to become the officer (including a provisional director or provisional auditor) or an inspector of a member commodity exchange, or a person that is to become the company director or company auditor of a incorporated commodity exchange, that has made a false statement to the competent minister, the court, or the general meeting of members, or has concealed a fact, with regard to subscription, payment, or delivery of contribution in kind for the total number of shares issued pursuant to the provisions of Article 129, or with regard to a particular set forth in item (iii) of that Article;
- (iii) a person that violates the provisions of Article 167 in performing business of assuming commodity transaction debts;
- (iv) a person that violates the provisions of Article 190, paragraph (1) in conducting commodity derivatives business;
- (v) a person that has obtained a license under Article 190, paragraph (1) or registration under Article 240-2, paragraph (1) through wrongful means;
- (vi) a person that had another person conduct commodity derivatives business, in violation of the provisions of Article 199;
- (vii) a person that had another person conduct commodity derivatives intermediation services, in violation of Article 240-10; or
- (viii) a person that violates an order under the provisions of Article 328, paragraph (1).

Article 358 In the case of a violation of the provisions of Article 5, paragraph (1) or (2), the representative, agent, employee, or other worker of the commodity exchange that committed the act is subject to punishment by imprisonment for not more than three years, a fine of not more than three million yen, or both.

Article 358-2 In the case of a violation of the provisions of Article 214-3, paragraph (1) (including as applied mutatis mutandis pursuant to Article 240-17 and Article 349, paragraph (3)), the representative, agent, employee, or other worker of the commodity derivatives business operator, commodity derivatives intermediary service provider, or specified over-the-counter commodity derivatives business operator that committed the act is subject to punishment by imprisonment for not more than three years, a fine of not more than three million yen, or both.

Article 359 (1) If an officer (if the accounting advisor is a corporation, this means a member that performs the duties of accounting advisor and includes a provisional director, provisional auditor, provisional company director, provisional executive officer, or provisional company auditor) or an employee of a commodity exchange or an association accepts, requests, or promises to accept a bribe in relation to the person's duties, the officer or employee is subject to punishment by imprisonment for not more than five years.

(2) In the case referred to in the preceding paragraph, the bribe accepted is confiscated. If the whole or a part of the bribe cannot be confiscated, an equivalent amount is collected.

(3) A person that provides, offers, or promises to provide the bribe referred to in paragraph (1) is subject to punishment by imprisonment for not more than three years or by a fine of not more than three million yen.

Article 359-2 (1) The provisions on the crimes referred to in paragraph (1) of the preceding Article also apply to a person that commits those crimes outside Japan.

(2) The crimes referred to in paragraph (3) of the preceding Article are governed by Article 2 of the Penal Code.

Article 360 In the case of a violation of a disposition under the provisions of Article 96-40, paragraph (2), Article 118, item (ii) or (iii), Article 158, paragraph (1), Article 159, paragraphs (1) through (3), Article 160, paragraph (1), Article 186, paragraph (1) or (4), or Article 265, paragraph (1) or (3), the representative, agent, employee, or other worker of the commodity exchange, commodity exchange holding company, commodity clearing organization, or association that committed the act is subject to punishment by imprisonment for not more than two years, a fine of not more than three million yen, or both.

Article 361 A person that falls under any of the following items is subject to punishment by imprisonment for not more than two years, a fine of not more than three million yen, or both:

- (i) a person that violates the provisions of Article 96-25, paragraph (1) or (3), Article 96-40, paragraph (3), or Article 210;
- (ii) a person that violates a disposition of suspension of business under the provisions of Article 232, paragraph (2), Article 235, paragraph (2), Article 236, paragraph (1), Article 240-23, paragraph (1), Article 340, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345) or Article 349, paragraph (8);
- (iii) a person that violates an order under the provisions of Article 236, paragraph (2) or Article 240-23, paragraph (2).

Article 362 A person that falls under any of the following items is subject to punishment by imprisonment for not more than one year, a fine of not more than three million yen, or both:

- (i) a person that has entered or recorded a false statement in a written application, an attached document, or an electronic or magnetic record under the provisions of Article 14, Article 79, Article 96-26, Article 168, Article 192, paragraph (1) or (2), Article 225, paragraph (2) or (3), Article 228, paragraph (2) or (3), Article 240-3, Article 247, Article 332, paragraph (2) or (3), or Article 342, paragraph (2) or (3), and has submitted the document or record;
- (ii) a person that has failed to make a report or submit materials under the provisions of Article 86-3, paragraph (1), Article 96-21, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 96-30, paragraph (1), Article 96-33, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 96-39, paragraph (1) (including as applied mutatis mutandis pursuant to the Article 96-43), Article 157, paragraph (1), Article 184, paragraph (1), Article 231, paragraph (1), Article 240-22, paragraph (1), Article 263, paragraph (1), Article 338, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345), or Article 349, paragraph (5), or has made a false report or submitted false materials;
- (iii) a person that has refused, prevented, or evaded an inspection under the provisions of Article 86-3, paragraph (1), Article 96-21, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 96-30, paragraph (1), Article 96-33, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 96-39, paragraph (1) (including as applied mutatis mutandis pursuant to Article 96-43), Article 157, paragraphs (1) through (3), Article 184, paragraph (1), Article 231, paragraph (1) or (3), Article 240-22, paragraph (1), Article 263, paragraph (1), Article 338, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345), or Article 349, paragraph (5);

- (iv) a person that has failed to give a notification under the provisions of Article 197, paragraph (1) or (4) or that has given a false notification;
- (v) a person that has failed to issue a public notice under the provisions of Article 197, paragraph (3) or that has issued a false public notice;
- (vi) a person that has failed to give a notification under the provisions of Article 211, paragraph (1) or that has given a false notification;
- (vii) a person that has failed to make a document under the provisions of Article 211, paragraph (3) available for public inspection or that has made a document that contains a false statement available for public inspection;
- (viii) a person that has violated the provisions of Article 214, item (ii) or Article 240-16, item (i), (b);
- (ix) a person that has failed to prepare or preserve books under the provisions of Article 222, Article 240-20, Article 336, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345), or Article 349, paragraph (4), or has prepared false books;
- (x) a person that has violated the provisions of Article 223;
- (xi) a person that has failed to submit a report under the provisions of Article 224 or Article 240-21, or a document under the provisions of Article 268, or has submitted a report or document that contains a false statement;
- (xii) a person that has violated an order under the provisions of Article 232, paragraph (1), Article 234, Article 235, paragraph (1), or Article 240-23, paragraph (1) (for the order referred to in that paragraph, this excludes a disposition of suspension of business);
- (xiii) a person that has not given a notice or that has given a false notice, in violation of the provisions of Article 303, paragraph (1);
- (xiv) a person that has failed to make a report under the provisions of Article 336, paragraph (2) (including as applied mutatis mutandis pursuant to Article 345) or has made a false report.

Article 363 A person that falls under any of the following items is subject to punishment by imprisonment for not more than one year, by a fine of not more than one million yen, or both:

- (i) a person that has violated the provisions of Article 6, paragraph (2), Article 97, paragraph (1) or (2) in conducting transactions;
- (ii) a person that has violated the provisions of Article 86, paragraph (1) or (4);
- (iii) a person that has violated the provisions of Article 96-19, paragraph (1) or (4), Article 96-22, paragraph (2), Article 96-31, paragraph (1) or (3), or Article 96-34, paragraph (2);
- (iv) a person that has violated an order under the provisions of Article 96-22, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (5) of that Article), Article 96-34, paragraph (1) (including as applied mutatis



- mutandis pursuant to paragraph (4) of that Article), or Article 96-40, paragraph (1) (including as applied mutatis mutandis pursuant to Article 96-43);
- (v) a person that has violated the provisions of Article 96-28, paragraph (1) or (4);
  - (vi) a person that has violated the restriction under the provisions of Article 118, item (i);
  - (vii) a person that has violated the provisions of Article 200, paragraph (2) (including as applied mutatis mutandis pursuant to Article 240-11);
  - (viii) a person that has violated the provisions of Article 209, paragraph (1) or Article 212;
  - (ix) a person that has violated the provisions of Article 214-3, paragraph (2) (including as applied mutatis mutandis pursuant to Article 240-17 or Article 349, paragraph (3));
  - (x) a person that has entered a false statement in a written application or a document under the provisions of Article 214-3, paragraph (5) (including as applied mutatis mutandis pursuant to Article 240-17 or Article 349, paragraph (3)) and has submitted the written application or document;
  - (xi) a person that has violated the provisions of Article 240-15;
  - (xii) a person that, in violation of the provisions of Article 244, paragraph (2), has used a word in their name which could give rise to the misconception that they are a member of a commodity futures association;
  - (xiii) a person that has issued a false public notice of the quotations on a commodity market;
  - (xiv) a person that has prepared a document that contains a false statement of the quotations on a commodity market for public notice or distribution purposes, or that has distributed the document;
  - (xv) a person that has changed a particular set forth in Article 332, paragraph (2), item (iii) or (iv) without obtaining the permission referred to in Article 335, paragraph (1);
  - (xvi) a person that has violated an order under the provisions of Article 339, paragraph (1), Article 344, paragraph (1), or Article 349, paragraph (7); or
  - (xvii) a person that has changed a particular set forth in Article 342, paragraph (2), item (iii) or item (iv) without obtaining the permission referred to in Article 335, paragraph (1) as applied mutatis mutandis pursuant to Article 345.

Article 364 In the case of a violation set forth in one of the following items, the representative, agent, employee, or other worker of the commodity exchange, commodity clearing organization, or association that has committed the violation is subject to punishment by imprisonment for not more than one year,

a fine of not more than one million yen, or both:

- (i) when the person has violated the provisions of Article 7, paragraph (2) or Article 242, paragraph (1);
- (ii) when the person has violated the provisions of Article 65, Article 103, paragraph (4) (including as applied mutatis mutandis pursuant to Article 179, paragraph (5)), or Article 110 (including as applied mutatis mutandis pursuant to Article 180, paragraph (5)); or
- (iii) when the person has violated an order under the provisions of Article 185 or Article 264.

Article 365 A person that has violated the provisions of Article 329 in performing an act for the purpose of paying and receiving the difference is subject to punishment by imprisonment for not more than one year, a fine of not more than one million yen, or both; provided, however, that this does not preclude the application of the provisions of Article 186 of the Penal Code.

Article 366 A person that has violated the provisions of Article 161, Article 176, Article 267, or Article 298 is subject to punishment by imprisonment for not more than one year or by a fine of not more than 500 thousand yen.

Article 367 A person that falls under any of the following items is subject to punishment by imprisonment for not more than six months, a fine of not more than 500 thousand yen, or both:

- (i) a person that has violated the provisions of Article 4, paragraph (2), Article 55 (including as applied mutatis mutandis pursuant to Article 77, paragraph (2)), Article 91, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 105, Article 106, or Article 272, paragraph (2);
- (ii) a person that has failed to give a notification under Article 86, paragraph (3), Article 96-19, paragraph (3) (including as applied mutatis mutandis pursuant to Article 96-25, paragraph (4) or Article 96-31, paragraph (4)), or Article 96-28, paragraph (3), or has given a false notification;
- (iii) a person that has failed to submit a notification of holding subject voting rights under the provisions of Article 86-2, paragraph (1) or Article 96-29, or has submitted a notification of holding subject voting rights that contains a false statement;
- (iv) a person that has entered a false statement in a written application or an attached document under the provisions of Article 200, paragraph (3) or (4) (including as applied mutatis mutandis pursuant to Article 240-11) or Article 335, paragraph (2) (including as applied mutatis mutandis pursuant to Article 345) and has submitted the written application or document;

- (v) a person that has failed to indicate the particulars prescribed in Article 213-2, paragraph (1) or Article 240-13, paragraph (1), or that has indicated false particulars;
- (vi) a person that has violated the provisions of Article 213-2, paragraph (2) or Article 240-13, paragraph (2);
- (vii) a person that, in violation of the provisions of Article 217, paragraph (1), has failed to deliver a written document, has delivered a written document that does not contain the particulars prescribed in that paragraph or a written document that contains a false statement, or has provided a person with something that lacks those particulars or that contains false particulars by the means prescribed in paragraph (2) of that Article;
- (viii) a person that, in violation of the provisions of Article 220, paragraph (1), has failed to give notice or has given notice using a written document that does not contain the particulars prescribed in that paragraph or a written document that contains a false statement, or has given a notice that lacks a statement of the particulars or contains false particulars by the means prescribed in Article 217, paragraph (2) as applied *mutatis mutandis* pursuant to Article 220, paragraph (2) following the deemed replacement of terms;
- (ix) a person that, in violation of the provisions of Article 220-2, paragraph (1), has failed to deliver a document, has delivered a document that does not contain the particulars prescribed in that paragraph, or has delivered a document that contains a false statement, or has provided a person with something that lacks a statement of the particulars or contains a false statement by the means prescribed in Article 217, paragraph (2) as applied *mutatis mutandis* pursuant to Article 220-2, paragraph (2); or
- (x) a person that, in violation of the provisions of Article 244, paragraph (1), uses a word in their name which could give rise to the misconception that they are a commodity futures association.

Article 368 In the case of a violation set forth in the following items, the representative, agent, employee, or other worker of the commodity exchange, commodity exchange holdings company, commodity clearing organization, or association that has committed the violation is subject to punishment by imprisonment for not more than six months, a fine of not more than 500 thousand yen, or both:

- (i) when the person has violated the provisions of Article 3, paragraph (1), Article 3-2, paragraph (1), Article 64, Article 96-37, paragraph (1), Article 170, paragraph (2), or Article 242, paragraph (2); and
- (ii) when the person has entered a false statement in a written application or an attached document under the provisions of Article 155, paragraph (2) or

Article 156, paragraph (2) and submitted the written application or document.

Article 369 A person that falls under any of the following items is subject to punishment by a fine of not more than 300 thousand yen:

- (i) a person that has failed to give a notification under the provisions of Article 96-19, paragraph (5) (including as applied mutatis mutandis pursuant to Article 96-25, paragraph (4) and Article 96-31, paragraph (4)), or has given a false notification;
- (ii) a person that has violated the provisions of Article 101, paragraph (2), Article 115, Article 197-2, Article 198, paragraph (1), Article 240-8, or Article 240-9, paragraph (1);
- (iii) a person that has failed to submit a written notification under the provisions of Article 195, paragraph (1), Article 196, or Article 240-6, paragraph (1), or has submitted a written notification that contains a false statement, or has failed to submit an attached document under the provisions of Article 195, paragraph (2) or Article 240-6, paragraph (3), or has entered a false statement in the attached document and has submitted it;
- (iv) a person that, in violation of the provisions of Article 198, paragraph (2) or Article 240-9, paragraph (2), has posted a sign under the provisions of paragraph (1) of Article 198 or Article 240-9 or a sign similar to the sign;
- (v) a person that has failed to give a notification under the provisions of Article 203 (including as applied mutatis mutandis pursuant to Article 240-11), Article 240-7, paragraph (1), or Article 276, paragraph (4), or has filed a false notification;
- (vi) a person that, in violation of the provisions of Article 216, has concluded a contract to become entrusted with a transaction in a commodity market, etc. without complying with the entrustment contract regulations specified by a commodity exchange;
- (vii) a person that has failed to make a report or has failed to submit a material under the provisions of Article 231, paragraph (2) or Article 240-22, paragraph (2), or has made a false report or has submitted a false material;
- (viii) a person that has submitted a written application or an attached document under the provisions of Article 279, paragraph (1) or (2) by entering a false statement and has submitted the written application or the attached document;
- (ix) a person that has failed to make a report or submit a material under the provisions of Article 302, paragraph (2), or has made a false report or has submitted a false material;
- (x) a person that has failed to make a report or submit a material under the

provisions of Article 322, paragraph (1), or has made a false report or has submitted a false material;

- (xi) a person the has refused, hindered, or evaded an inspection under the provisions of Article 322, paragraph (1); or
- (xii) a person that has failed to give a notification under the provisions of Article 334, paragraph (2) (including as applied mutatis mutandis pursuant to Article 345), Article 335, paragraph (3) (including as applied mutatis mutandis pursuant to Article 345), Article 337, paragraph (1) (including as applied mutatis mutandis pursuant to Article 345), or Article 349, paragraph (1) or (9), or has given a false notification.

Article 370 In the case of a violation set forth in one of the following items, the representative, agent, employee, or other worker of the commodity exchange, commodity clearing organization, association, or consignor protection fund has committed the violation is subject to punishment by a fine of not more than 300 thousand yen:

- (i) the person has failed to submit a written notification under the provisions of Article 19, paragraph (1) or Article 85, paragraph (1) or has submitted a written notification that contains a false statement, or has failed to submit an attached document under the provisions of Article 19, paragraph (2) or Article 85, paragraph (2) or has entered a false statement in an attached document and submitted it;
- (ii) the person has violated the provisions of Article 70 or Article 95;
- (iii) the person has violated the provisions of Article 88, paragraph (1) or Article 206, paragraph (3) (including as applied mutatis mutandis pursuant to Article 240-11);
- (iv) the person has failed to give a notification under the provisions of Article 170, paragraph (3) or the first sentence of Article 250, paragraph (3), or has given a false notification;
- (v) the person has failed to give a notification under the provisions of Article 171 or has given a false notification, or has failed to give an attached document under the provisions of that Article or has given an attached document that contains a false statement;
- (vi) the person has entered a false statement in a written application or an attached document under the provisions of Article 250, paragraph (2) and has submitted the written application or attached document; or
- (vii) the person has failed to make a report in violation of the provisions of Article 305, paragraph (4) or Article 308, paragraph (5), or has made a false report.

Article 370-2 A person that, in violation of the provisions of Article 955,

paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 11, paragraph (9), has failed to enter or record the particulars specified by Order of the Ministry of Justice concerning an electronic public notice investigation prescribed in that paragraph in the investigation record, etc. prescribed in that paragraph, has entered or recorded a false statement, or has failed to preserve the investigation record, etc., is subject to punishment by a fine of not more than 300 thousand yen.

Article 371 (1) If the representative of a corporation (including an organization that is not a corporation for which a representative or administrator has been designated; hereinafter the same applies in this Article) or the agent, employee, or other worker of a corporation or an individual has violated the provisions set forth in the following items, in addition to the offender being subject to punishment, the corporation is subject to punishment by the fine set forth in the following items and the individual is subject to punishment by the fine prescribed in the provisions referred to in the respective Articles:

- (i) the provisions of Article 356 (excluding items (iii) and (iv)): a fine of not more than 500 million yen;
  - (ii) the provisions of Article 358-2, Article 360, and Article 361: a fine of not more than 300 million yen;
  - (iii) the provisions of Article 362 (excluding items (iv) and (v)): a fine of not more than 200 million yen;
  - (iv) the provisions of Article 363, items (ii), (iv), (v), (x), (xi), (xiii), and (xiv): a fine of not more than 100 million yen; and
  - (v) the provisions of Article 357, item (i), items (iii) through (vii), Article 358, Article 362, items (iv) and (v), Article 363 (excluding items (ii), (iv), (v), (x), (xi), (xiii), and (xiv)), Article 364, Article 367, Article 368, Article 369 (excluding items (viii), (x), and (xi)), Article 370 (excluding item (vii)), and the preceding Article: the fine prescribed in the respective Articles.
- (2) The period of prescription when a fine is imposed on a corporation or an individual due to a violation referred to in Article 356 (excluding items (iii) and (iv)) pursuant to the provisions of the preceding paragraph is the same as that for the offenses set forth in that Article.
- (3) When an organization that is not a corporation is to be punished pursuant to the provisions of paragraph (1), its representative or administrator represents the organization with regard to procedural acts, and the provisions of laws concerning criminal proceedings if a corporation is the accused or a suspect apply mutatis mutandis.

Article 372 In the case of a violation set forth in any of the following items, the officer (including a provisional director, provisional company director, and

provisional executive officer) or liquidator of the commodity exchange that has committed the violation is subject to punishment by a civil fine of not more than one million yen:

- (i) the person has failed to file a petition for commencement of bankruptcy proceedings in violation of the provisions of Article 484, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1);
- (ii) the person has inappropriately specified a period referred to in Article 499, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1) for the purpose of delaying the completion of liquidation;
- (iii) the person has violated the provisions of Article 500, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1) and has performed the obligations;
- (iv) the person has failed to appoint the majority of members of the self-regulatory committee as outside company directors, in violation of Article 96-3, paragraph (1);
- (v) the person has failed to keep minutes, in violation of Article 96-14, paragraph (1);
- (vi) the person has failed to make the register under the provisions of Article 96-16 available for public inspection;
- (vii) the person has failed to give a notice under the provisions of Article 130, paragraph (1) or (4), or has given a false notice; or
- (viii) the person has failed to make a registration under the provisions of Article 134, paragraph (1).

Article 372-2 A person that falls under any of the following items is subject to punishment by a civil fine of not more than one million yen:

- (i) a person that, in violation of the provisions of Article 946, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 11, paragraph (9), has failed to make a report or has made a false report;
- (ii) a person that has refused a request set forth in the items of Article 951, paragraph (2) or of Article 955, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 11, paragraph (9), without legitimate grounds; or
- (iii) a person that has refused the public inspection or copying under the provisions of Article 96-14, paragraph (2) or (3) (including as applied mutatis mutandis pursuant to paragraph (4) of that Article), without legitimate grounds.

Article 373 A person that falls under any of the following items is subject to

punishment by a civil fine of not more than 500 thousand yen:

- (i) a person that has failed to establish a solicitation policy in violation of the provisions of Article 9, paragraph (1) of the Act on Sales of Financial Products as applied *mutatis mutandis* pursuant to Article 220-3 or Article 240-19, or has failed to disclose the solicitation policy in violation of the provisions of Article 9, paragraph (3) of that Act; or
- (ii) a person that, in violation of the provisions of Article 221, paragraph (1) or (2), has failed to set aside a liability reserve for commodity trading, or has used the reserve.

Article 374 In the case of a violation set forth in one of the following items, the founder, officer (including a provisional director, provisional company director, or provisional executive officer), or liquidator of the commodity exchange that committed the violation, the officer (including a provisional director) of the association that committed the violation, or the officer (including a provisional director or provisional auditor) or liquidator of the consignor protection fund that committed the violation, is subject to punishment by a civil fine of not more than 300 thousand yen:

- (i) when the person has failed to request the investigation referred to in Article 941 of the Companies Act in violation of the provisions of that Article as applied *mutatis mutandis* pursuant to Article 11, paragraph (9);
- (ii) when the person has failed to give a notification under the provisions of Article 16, paragraph (2);
- (iii) when the person has violated the provisions of Article 57, paragraphs (1) through (3), Article 67, Article 68-2, paragraph (1) or (2) (including as applied *mutatis mutandis* pursuant to Article 77, paragraph (2)), Article 76, paragraph (2), Article 93, paragraph (1) or (2), Article 94, paragraph (2), Article 96, paragraph (2), Article 103, paragraph (1), Article 107, Article 111, Article 112, Article 123, paragraph (1), Article 125, paragraph (1), Article 144, paragraph (1), Article 144-2, paragraph (1) or (6), Article 144-3, paragraph (1), Article 144-4, paragraph (4), Article 144-5, paragraph (1), Article 144-12, paragraph (2), Article 144-13, paragraph (1), Article 144-21, paragraph (2), or Article 179, paragraph (1);
- (iv) when the person has refused the inspection of a thing that shows the particulars that have been recorded in a document or an electronic or magnetic record by the means specified by order of the competent ministry, has refused to issue a certified copy or extract of a document, has refused to provide a person with the particulars recorded in an electronic or magnetic record by electronic or magnetic means specified by order of the competent ministry, or has refused to issue a document that states the particulars, without legitimate grounds, and in violation of the provisions of Article 57,



- paragraph (5) (including as applied mutatis mutandis pursuant to Article 77, paragraph (2) and Article 93, paragraph (3)), Article 123, paragraph (3), Article 125, paragraph (3), Article 144, paragraph (3), Article 144-2, paragraph (8), Article 144-3, paragraph (3), Article 144-4, paragraph (6), Article 144-5, paragraph (3), Article 144-12, paragraph (4), Article 144-13, paragraph (3), or Article 144-21, paragraph (4);
- (v) when the person has distributed the property of a member commodity exchange in violation of the provisions of Article 502 of the Companies Act as applied mutatis mutandis pursuant to Article 77, paragraph (1);
  - (vi) when the person has failed to make the particulars prescribed in Article 87 available for public inspection in violation of the provisions of that Article;
  - (vii) when the person has failed to give a notification in violation of the provisions of Article 88, paragraph (2), Article 206, paragraph (4) (including as applied mutatis mutandis pursuant to Article 240-11), the second sentence of Article 250, paragraph (3), or Article 262, paragraph (2);
  - (viii) when the person has failed to make a report under the provisions of Article 99, paragraph (3) or (4);
  - (ix) when the person has taken the procedures for entity conversion in violation of the provisions of Article 122, paragraph (1);
  - (x) when the person has implemented an entity conversion or a merger of a commodity exchange in violation of the provisions of Article 124, paragraph (2) or (5) (including as applied mutatis mutandis pursuant to Article 144, paragraph (6), Article 144-2, paragraph (4), and Article 144-3, paragraph (6)) or Article 144-11, paragraph (2) or (5) (including as applied mutatis mutandis pursuant to Article 144-19);
  - (xi) when the person has failed to issue public notice under the provisions of this Act or public notice under the provisions of the Companies Act as applied mutatis mutandis pursuant to this Act, or has given false public notice;
  - (xii) when the person has failed to make a registration (other than one under the provisions of Article 134, paragraph (1)) under the provisions of this Act;
  - (xiii) when the person has obstructed an investigation prescribed in the Companies Act as applied mutatis mutandis pursuant to this Act;
  - (xiv) when the person has made a false statement or has concealed a fact at a commodity exchange's organizational meeting or general meeting of members;
  - (xv) when the person has failed to enter or record particulars that are required to be entered or recorded in the articles of incorporation, member register, trading participant register, minutes, inventory of property, balance sheet, profit and loss statement, business report, proposal for appropriation of surplus, proposal for disposal of loss, or settlement of accounts, or has

- entered or recorded a false statement;
- (xvi) when the person has failed to make the association member register set forth in Article 252 available for public inspections in violation of the provisions of that Article;
- (xvii) when the person has violated the provisions of Article 275, paragraph (2) or Article 320;
- (xviii) when the person has not obtained the authorization of the competent minister pursuant to the provisions of Chapter VI when the person is required to obtain the authorization;
- (xix) when the person has failed to give a notification under the provisions of Article 283, paragraph (3) or has given a false notification;
- (xx) when the person has violated an order under the provisions of Article 286, paragraph (5) or Article 323;
- (xxi) when the person has conducted business other than that prescribed in Article 300;
- (xxii) when the person has failed to make a report under the provisions of Article 303, paragraph (2) or has made a false report;
- (xxiii) when the person has failed to submit a document prescribed in Article 318, paragraph (1) or (2), or has submitted a false document;
- (xxiv) when the person has violated the provisions of Article 319 in its accounting; or
- (xxv) when the person has violated the provisions of Article 327 and has disposed the residual assets of the consignor protection fund.

Article 375 A person that falls under any of the following items is subject to punishment by a civil fine of not more than 100 thousand yen:

- (i) a person that has failed to give a statement or has given a false statement, or has failed to make a report or has made a false report in violation of a disposition against a witness, or has failed to give an expert opinion, or has given a false expert opinion in violation of a disposition against an expert, under the provisions of Article 15, paragraph (9) (including as applied *mutatis mutandis* pursuant to Article 80, paragraph (4), Article 133, paragraph (3), Article 146, paragraph (4), Article 155, paragraph (6), Article 156, paragraph (7), Article 169, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 173, paragraph (4)), Article 194, Article 201, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 240-11), Article 229, Article 240-25, Article 248, paragraph (2), Article 280, paragraph (2), Article 333, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 335, paragraph (4)), Article 343, paragraph (3) (including as applied *mutatis mutandis* pursuant to Article 335, paragraph (4)) as are applied *mutatis mutandis* pursuant to Article 345 following the

- deemed replacement of terms)), Article 96-22, paragraph (3) (including as applied mutatis mutandis pursuant to paragraph (5) of that Article, Article 96-34, paragraph (3) and (4), Article 96-40, paragraph (5), and Article 96-43), or Article 158, paragraph (2) (including as applied mutatis mutandis pursuant to Article 159, paragraph (5), Article 160, paragraph (2), Article 187, Article 204, paragraph (3) (including as applied mutatis mutandis pursuant to Article 240-11), Article 206, paragraph (6) (including as applied mutatis mutandis pursuant to Article 240-11), Article 237, Article 240-25, Article 266, Article 324, paragraph (2), Article 339, paragraph (2), Article 340, paragraph (2) (including as applied mutatis mutandis pursuant to Article 345), and Article 344, paragraph (2)); or
- (ii) a person that has failed to submit a report or materials, or has submitted a false report or materials, in violation of a disposition against a person that conducts commodity derivatives transactions, or to any other concerned party or witness under the provisions of Article 349-2, paragraph (1).

### **Supplementary Provisions [Extract]**

(Effective Date)

- (1) This Act comes into effect as of the day on which 15 days have elapsed from the date of promulgation; provided, however, that the provisions of Article 8 (including the penal provisions related to the provisions), Chapter XV, and paragraph (2), paragraph (3), and paragraphs (7) through (11) of the Supplementary Provisions come into effect as of the date of promulgation.

(Repeal of the Commodity Exchange Act)

- (2) The Commodity Exchange Act (Act No. 5 of 1893; hereinafter referred to as the "former Act") is repealed.
- (3) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the repeal of the former Act.

(Special Provisions on Disqualifying Conditions for Members)

- (6) With regard to the application of the provisions of Article 24, paragraph (1), item (ii), those punished by a fine pursuant to the provisions of the former Act or the former Stock Exchange Act of Japan (Act No. 44 of 1943) are deemed to be those punished by a fine pursuant to this Act.

(Special Provisions on Appointment of the Chairperson and Members of the Council)

- (7) When enforcing the provisions of Chapter XV while the Diet is closed, the Prime Minister may appoint the initial chairperson and members of the council

without obtaining the consent of both Houses of the Diet, notwithstanding the provisions of Article 139, paragraph (2).

- (8) When the Prime Minister has appointed the initial chairperson and members of the council pursuant to the provisions of the preceding paragraph, the Prime Minister must request the subsequent approval by both Houses of the Diet on the appointment referred to in the preceding paragraph at the first Diet session held after the appointment. In such a case, if the subsequent approval by both Houses could not be obtained, the Prime Minister must dismiss the chairperson and members immediately.

**Supplementary Provisions [Act No. 176 of June 1, 1951 Extract] [Extract]**

- (1) This Act comes into effect as of the day of promulgation.
- (3) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act, notwithstanding the provisions of Article 7.

**Supplementary Provisions [Act No. 211 of June 8, 1951 Extract] [Extract]**

- (1) This Act comes into effect as of July 1, 1951.
- (4) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

**Supplementary Provisions [Act No. 90 of April 12, 1952]**

- (1) This Act comes into effect as of the day of promulgation.
- (2) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

**Supplementary Provisions [Act No. 92 of May 10, 1954 Extract] [Extract]**

- (1) The effective date of this Act is specified by Cabinet Order within a period not exceeding three months from the date of promulgation.
- (2) A commodity exchange which has obtained the registration set forth in Article 9, paragraph (5) prior to the amendment at the time of the enforcement of this Act is deemed to have received the permission set forth in Article 8-2 after the amendment.
- (3) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

**Supplementary Provisions [Act No. 82 of April 20, 1962 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of April 1, 1963.

(Definitions)

Article 2 The term "new Act" as used in these Supplementary Provisions means the Commercial Code as amended by this Act, and the "former Act" means the Commercial Code in force before this Act came into effect.

(Principles)

Article 3 Except as otherwise provided, the new Act also applies to matters that have arisen prior to the enforcement of this Act; provided, however, that this does not preclude the effects that have arisen from the provisions of the former Act.

**Supplementary Provisions [Act No. 126 of July 9, 1963 Extract] [Extract]**

This Act comes into effect as of the date on which the Commercial Registration Act comes into effect (April 1, 1964).

**Supplementary Provisions [Act No. 97 of July 29, 1967 Extract] [Extract]**

- (1) This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.
- (2) With regard to a person who has received registration as a commodity broker (hereinafter referred to as a "commodity broker") pursuant to the provisions of the Commodity Exchange Act prior to its amendment (hereinafter referred to as the "former Act") at the time of the enforcement of this Act, the provisions of the former Act (excluding Article 42, Article 42-2, Article 44, Article 46, paragraph (2) (limited to the part related to brokerage deposits), Article 47, Article 49 (limited to the part related to the establishment of business offices or offices, or to the addition of commodities), Article 50, Article 91, paragraph (1) (limited to the part related to restriction on solicitation of consignment), Article 93, Article 94, and Article 97, and penal provisions regarding those provisions) remain in force only for commodities related to the registration (excluding those related to the license under Article 41, paragraph (1) of the Commodity Exchange Act after the amendment (hereinafter referred to as the "new Act")); the same applies hereinafter), for three years from the date on which this Act comes into effect.
- (3) With regard to a commodity broker, the provisions of Article 49, Article 50, Article 53-3, Article 91-2, Article 93, Article 94, paragraph (1), Articles 97

through 97-6, Article 119, paragraph (2), and Article 120, paragraphs (2) through (4) of the new Act and the provisions of Article 20-3 and Article 57 of the Act on Special Measures Concerning Taxation (Act No. 26 of 1957) amended by those provisions, only for commodities related to the registration, apply to the person by deeming the person as a futures commission merchant set forth in the new Act for each of those commodities, during the period prescribed in the preceding paragraph. In such a case, "must not start accepting entrusted operations" in Article 97-2, paragraph (3) is deemed to be replaced with "must not accept consignment of purchase and sale transactions in a commodity market; provided, however, that this does not apply to cases in which the transactions are conducted within the scope of the purpose to complete the settlement of the purchase and sale transactions in a commodity market related to the entrustment."

- (5) With regard to the application of the provisions of Article 97-3, paragraph (1), a person who has entrusted a commodity business operator with purchase and sale transactions in a commodity market prior to the enforcement of this Act is deemed to have entrusted a futures commission merchant with the purchase and sale transactions in a commodity market.
- (6) A person who has their registration as a commodity business operator revoked pursuant to the provisions of Article 52, paragraph (1) or Article 123 of the former Act is deemed to have had their license revoked pursuant to the provisions of Article 52, paragraph (1) or Article 123 of the new Act on the day of the revocation.
- (7) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act (with regard to a commodity broker, prior to the expiration of the period during which the former Act remains in force pursuant to the provisions of paragraph (2)).
- (8) Beyond what is provided for in paragraph (2) through the preceding paragraph, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

**Supplementary Provisions [Act No. 23 of April 2, 1974 Extract] [Extract]**

This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

**Supplementary Provisions [Act No. 56 of July 15, 1975 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

(Transitional Measures)

Article 2 With regard to the application of the provisions of Article 41, paragraph (4) after the amendment to the license under paragraph (1) of that Article prior to the amendment which a futures commission merchant holds at the time of the enforcement of this Act, the term "every four years" in that paragraph is deemed to be replaced with "if the person did not have their license renewed by the day on which four years have elapsed from the effective date of the Act for Partial Revision of the Commodity Exchange Act (Act No. 65 of 1975), or every four years after the renewal."

Article 3 With regard to the application of the provisions of Article 47-2, paragraph (2) after the amendment to a futures commission merchant who has a controlling interest prescribed in that paragraph at the time of the enforcement of this Act, the term "without delay" in that paragraph is deemed to be replaced with "by the day on which 30 days have elapsed from the date on which the Act for Partial Revision of the Commodity Exchange Act (Act No. 65 of 1975) comes into effect".

Article 4 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

Article 5 Beyond what is provided for in the preceding three Articles, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

### **Supplementary Provisions [Act No. 87 of July 5, 1978 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

- (i) the provisions amending Article 64-4, paragraph (1), Article 66, Article 67, Article 68, paragraph (1), paragraphs (2) and (4), Article 69, and Article 69-2, paragraph (2); the provisions that add one Article after Article 69-3; the provisions amending Article 70, paragraphs (1) and (3); the provisions which change Article 70 to Article 71; the provisions that delete Article 72 and change Article 71 to Article 72: January 1, 1979;
- (ii) the provisions amending Article 18-8, Article 22, paragraph (2), and Article 22-3, paragraph (2); the provisions that delete Article 78, item (vi); the provisions amending Article 80, item (i) and Article 81; the provisions

amending the table of Article 82, paragraph (2) (limited to the part that deletes the row for the freshwater fisheries research laboratory); the provisions amending Article 83; the provisions which add one Article after Article 83; the provisions amending Article 87: the date specified by Cabinet Order for each provision within the period until March 31, 1979; and (iii) the provisions amending Article 18, paragraph (3), Article 18-3, paragraph (2) and Article 21, paragraph (2): the date specified by Cabinet Order for each provision within the period until March 31, 1980.

**Supplementary Provisions [Act No. 75 of June 9, 1981 Extract] [Extract]**

This Act comes into effect as of the date on which the Act for Partial Revision of the Commercial Code comes into effect (October 1, 1982).

**Supplementary Provisions [Act No. 78 of December 2, 1983]**

- (1) This Act (excluding Article 1) comes into effect as of July 1, 1984.
- (2) Transitional measures necessary for organizations, etc. which have been established under the provisions of Acts as of the day preceding the date on which this Act comes into effect, which are to be established under the provisions of the National Administrative Organization Act or the provisions of Cabinet Order based on the provisions of related laws amended by this Act (hereinafter referred to as the "related Cabinet Order") after the date this Act comes into effect, and other transitional measures necessary for the establishment, amendment, or repeal of the related Cabinet Order accompanying the enforcement of this Act may be specified by Cabinet Order.

**Supplementary Provisions [Act No. 81 of June 11, 1988 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day on which 20 days have elapsed from the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

- (i) The parts related to the provisions of Article 151-3, paragraphs (2) through (4), Article 151-5, and Article 151-7 among the provisions that add one Chapter after Chapter IV of the Real Property Registration Act in Article 1 of this Act; the provisions amending the Table of Contents of the Commercial Registration Act, and the parts related to the provisions of Article 113-2, Article 113-3, Article 113-4, paragraph (1), paragraphs (4) and (5), and Article 113-5 among the provisions that add one Chapter after Chapter III of that Act in Article 2 of this Act; the provisions of Articles 8 through 10 of the



Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

**Supplementary Provisions [Act No. 91 of December 22, 1989 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding two years from the date of promulgation.

**Supplementary Provisions [Act No. 52 of June 27, 1990 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding three months from October 1, 1990; provided, however, that the provisions amending Article 54-2, the provisions which add one Article after Article 92, the provisions amending Article 97-2 (excluding the provisions amending paragraph (2) of that Article, the part that amends the term "purchase and sale transactions" in the provisions amending paragraph (3) of that Article to "transactions" and the part that amend the term "by Cabinet Order" in the provisions amending paragraph (5) of that Article to "by order of the competent ministry"), the provisions that amend Article 97-3, paragraph (2), the provisions that amend Article 97-4, the provisions amending Article 97-11, paragraph (3) (limited to the part that amends the phrase "the amount as specified in the payment contract" to "the contracted payment amount"), the provisions amending Article 146 (limited to the part that adds the term "Article 54-2, paragraph (2)" after the term "Article 52, paragraph (3)"), the provisions amending Article 161, item (i), the provisions amending Article 164 (limited to the part that adds one item after item (ii) of that Article), and the provisions amending Article 166, items (i) and (ii) (limited to the part that adds the term "Article 54-2, paragraph (2)" after the term "Article 52, paragraph (3)") comes into effect as of April 1, 1991.

(Transitional Measures for Permission for Exchanges)

Article 2 (1) A commodity exchange that has obtained the permission under Article 8-2 of the Commodity Exchange Act prior to amendment (hereinafter referred to as the "former Act") at the time of the enforcement of this Act is deemed to be a commodity exchange established with the permission under Article 8-2 of the Commodity Exchange Act after the amendment (hereinafter referred to as the "new Act").

(2) A commodity market that has been opened by a commodity exchange deemed

to have been established with the permission under Article 8-2 of the new Act (hereinafter referred to as an "exchange under the former Act") pursuant to the provisions of the preceding paragraph (hereinafter the commodity market is referred to as a "former market") at the time of the enforcement of this Act is deemed to be a commodity market referred to in Article 2, paragraph (7) of the new Act opened by an exchange under the former Act.

- (3) A listed commodity related to a former market which is listed at the time of the enforcement of this Act is deemed to be a commodity that an exchange under the former Act has specified in its articles of incorporation as a listed commodity referred to in Article 2, paragraph (4) of the new Act.
- (4) The type of purchase and sale transactions which have been conducted in a former market at the time of the enforcement of this Act are deemed to be transactions that an exchange under the former Act has specified in its articles of incorporation as transactions set forth in Article 2, paragraph (6), item (i) or paragraph (8), item (i), (d) of the new Act related to listed commodities.

(Transitional Measures for License for Futures Commission Merchants)

- Article 3 (1) A person who has obtained the license under Article 41, paragraph (1) of the former Act (hereinafter referred to as a "license under the former Act") at the time of the enforcement of this Act is deemed to have obtained a license under Article 41, paragraph (1) related to a person set forth in paragraph (2), item (i) of that Article of the new Act (hereinafter referred to as a "license under the new Act").
- (2) With regard to the application of the provisions of Article 41, paragraph (4) of the new Act to a person who is deemed to have obtained a license under the new Act pursuant to the provisions of the preceding paragraph, the day when the person obtained a license under the former Act is deemed to be the day when the person obtained a license under the new Act.
  - (3) With regard to the application of the provisions of Article 46, paragraph (1) and Article 47, paragraph (1), item (i) of the new Act to a person who is deemed to have obtained a license under the new Act pursuant to the provisions of paragraph (1), the phrase "in the following cases (in the cases set forth in item (ii) or (iii) for a futures commission merchant who obtained a license for Second Class Business of Accepting Consignment of Commodity Transactions)" in Article 46, paragraph (1) of the new Act is deemed to be replaced with "in the cases set forth in item (ii) or (iii)," and "particulars set forth in Article 43, paragraph (1), item (i), (i)-2, or (iii) (particulars set forth in item (i) or (iii) of the same paragraph for a futures commission merchant who obtained a license for Second Class Business of Accepting Consignment of Commodity Transactions)" in Article 47, paragraph (1), item (i) of the new Act is deemed to be replaced with "particulars set forth in Article 43, paragraph (1), item (i) or

(iii)", during the period from the effective date of this Act to the day on which the person has their license under Article 41, paragraph (4) of the new Act renewed.

(4) With regard to the application of the provisions of Article 24, paragraph (1), items (iii) and (iv) of the new Act to a person who has had their license under the former Act revoked pursuant to the provisions of Article 52, paragraph (1) or Article 123 of the former Act, the person is deemed to have had their license under the new Act revoked pursuant to the provisions of Article 52, paragraph (1) or Article 123 of the new Act on the day of the revocation.

(Transitional Measures for Restriction on the Use of the Name of Futures Commission Merchant Association)

Article 4 The provisions of Article 54-4 of the new Act do not apply to a person who was, at the time of the enforcement of this Act, using words which could give rise to the misconception that the person is the futures commission merchant association or a future commission merchant association member in their name, for six months after the enforcement of this Act.

(Transitional Measures for Trading Margins)

Article 5 The trading margins which has already been deposited with an exchange under the former Act pursuant to the provisions of Article 79, paragraph (1) of the former Act at the time of the enforcement of this Act are deemed to be clearing margins that the member has deposited with the exchange under the former Act pursuant to the provisions of Article 79, paragraph (1) of the new Act.

(Transitional Measures for Designation of Payment Organizations)

Article 6 A person who has already received a designation under Article 97-2, paragraph (3) of the former Act at the time of the enforcement of this Act is deemed to have received a designation under Article 97-2, paragraph (3) of the new Act.

(Transitional Measures for Authorization for Dispute Resolution Rules)

Article 7 (1) An exchange under the former Act must prepare dispute resolution rules and obtain the authorization of the competent minister within 30 days from the date on which this Act comes into effect.

(2) The provisions of Article 15, paragraph (1), item (iv) and paragraph (9) of the new Act apply mutatis mutandis to the authorization referred to in the preceding paragraph.

(3) If an exchange under the former Act has violated the provisions of paragraph (1), the competent minister may revoke the permission for its establishment or

order suspension of all or a part of its business for a fixed period not exceeding one year.

- (4) If an exchange under the former Act has violated the disposition under the provisions of the preceding paragraph, the representative, agent, employee, or other worker of the exchange who has committed the act is subject to punishment by imprisonment for not more than one year or a fine of not more than a million yen, or both.
- (5) If the representative, agent, employee, or other worker of an exchange under the former Act has committed a violation referred to in the preceding paragraph, not only the offender, but also the exchange under the former Act is subject to punishment by a fine referred to in the preceding paragraph.

(Transitional Measures for Application of the Exemption Provisions on Prohibition of Establishing Facilities Similar to a Commodity Market)

Article 8 (1) The competent minister is to give public notice in the Official Gazette with regard to the locations where former markets have been opened and the listed commodities in the former markets which have already been listed at the time of the enforcement of this Act on the date on which this Act comes into effect.

(2) With regard to the listed commodities related to the public notice under the provisions of the preceding paragraph, the listed commodities is deemed to be listed commodities for which public notice has been given pursuant to the provisions of Article 147-2 of the new Act, and the provisions of Article 145-3 of the new Act apply.

(3) The provisions of Article 148, paragraph (1) of the new Act apply mutatis mutandis to the competent minister referred to in paragraph (1).

(Transitional Measures for Penal Provisions)

Article 9 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 10 Beyond what is provided for in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

### **Supplementary Provisions [Act No. 73 of June 5, 1992 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

**Supplementary Provisions [Act No. 89 of November 12, 1993 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the date on which the Administrative Procedure Act (Act No. 88 of 1993) comes into effect.

(Transitional Measures for Adverse Dispositions Consulted On)

Article 2 If, based on laws and regulations prior to the enforcement of this Act, consultation or any other request has been made to a council or other body with a council system concerning implementation of procedures equivalent to stating opinions such as conducting a hearing or granting an opportunity for explanation prescribed in Article 13 of the Administrative Procedure Act, prior laws continue to govern the procedures for adverse dispositions related to the consultation or other requests, notwithstanding the provisions of related laws amended by this Act.

(Transitional Measures for Penal Provisions)

Article 13 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

(Transitional Measures for the Adjustment of Provisions Regarding Hearings)

Article 14 Hearings (excluding those regarding adverse dispositions) conducted pursuant to the provisions of Acts prior to the enforcement of this Act or procedures for the hearings are deemed to have been conducted pursuant to the equivalent provisions of the related laws amended by this Act.

(Delegation to Cabinet Order)

Article 15 Beyond what is provided for in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

**Supplementary Provisions [Act No. 72 of June 6, 1997]**

(Effective Date)

(1) This Act comes into effect as of the date on which the Act for Partial Revision of the Commercial Code (Act No. 71 of 1997) comes into effect.

(Transitional Measures)

(2) Prior laws continue to govern a merger related to a merger agreement

concluded prior to the enforcement of this Act, even after the enforcement of this Act.

(Transitional Measures for the Application of Penal Provisions)

- (3) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act and acts committed after the enforcement of this Act to which the provisions previously in force are to remain applicable pursuant to the provisions of the preceding paragraph.

**Supplementary Provisions [Act No. 42 of April 22, 1998 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

- (i) the provisions of Article 8 of the Supplementary Provisions: the date of promulgation;
- (ii) the provisions amending Article 15 (excluding the provisions amending paragraph (1), item (iv) of that Article); the provisions amending Article 17; the provisions amending Article 20 and the provisions amending Article 147-2: the day on which three months have elapsed from the date of promulgation; and
- (iii) the provisions amending the title of Article 97 and the provisions amending paragraph (1) of that Article (limited to the part that deletes the term "collecting commission fees, and"): December 31, 2004

(Transitional Measures for the Permission for Exchanges)

Article 2 (1) Prior laws continue to govern the disposition of permission or non-permission of the application for permission filed prior to the enforcement of the provisions set forth in item (ii) of the preceding Article, pursuant to the provisions of Article 8-2 of the Commodity Exchange Act prior to the amendment by the provisions of that item, for which a disposition of permission or non-permission has not been made at the time of the enforcement of the provisions set forth in that item.

- (2) Prior laws continue to govern the disposition of authorization or refusal of authorization of the application for authorization filed prior to the enforcement of the provisions set forth in item (ii) of the preceding Article, pursuant to the provisions of Article 20, paragraph (1) of the Commodity Exchange Act prior to the amendment by the provisions of that item, for which a disposition of authorization or refusal of authorization has not been made at the time of the

enforcement of the provisions set forth in that item.

(Transitional Measures for the Authorization for Market Transaction  
Surveillance Committee Rules)

- Article 3 (1) A commodity exchange which has already obtained the permission under Article 8-2 of the Commodity Exchange Act prior to the amendment by this Act (hereinafter referred to as the "former Act") at the time of the enforcement of this Act must prepare market transactions surveillance committee rules and file an application for authorization with the competent minister within 30 days from the date on which this Act comes into effect (hereinafter referred to as the "date of enforcement").
- (2) The provisions of Article 15, paragraph (1), item (iv) of the Commodity Exchange Act amended by this Act (hereinafter referred to as the "new Act") apply mutatis mutandis to the authorization referred to in the preceding paragraph.
- (3) If an exchange under the former Act has violated the provisions of paragraph (1), the competent minister may revoke the permission for its establishment or order suspension of all or a part of its business for a fixed period not exceeding one year.
- (4) If an exchange under the former Act has violated the disposition under the provisions of the preceding paragraph, the representative, agent, employee, or other worker of the exchange under the former Act who has committed the act is subject to punishment by imprisonment for not more than two years or a fine of not more than three million yen, or both.
- (5) If the representative, agent, employee, or other worker of an exchange under the former Act has committed a violation referred to in the preceding paragraph, not only the offender is subject to punishment but also the exchange under the former Act is subject to punishment by a fine of not more than 300 million yen.

(Transitional Measures for the License for Futures Commission Merchants)

- Article 4 (1) A person who has, at the time of the enforcement of this Act, already obtained a license under Article 41, paragraph (1) of the former Act related to a person set forth in paragraph (2), item (i) of that Article or a person set forth in item (ii) of that paragraph (hereinafter referred to as a "license under the former Act") is deemed to have obtained a license under Article 126, paragraph (1) of the new Act related to a person set forth in paragraph (2), item (i) of that Article or a person set forth in item (ii) of that paragraph of the new Act (hereinafter referred to as a "license under the new Act"), respectively, with regard to types of licenses including a commodity market related to the license under the former Act (meaning types of licenses

prescribed in Article 126, paragraph (2) of the new Act; the same applies hereinafter), deeming a commodity market related to a license under the former Act to be a commodity market where the entrustment of transactions in a commodity market under Article 128, paragraph (1), item (iv) of the new Act is accepted.

- (2) With regard to a person who is deemed to have obtained a license under the new Act pursuant to the provisions of the preceding paragraph and deemed to have obtained two or more licenses for a single type of license, the provisions of this Act apply, deeming the two or more licenses to be one license.
- (3) With regard to the application of the provisions of Article 126, paragraph (4) of the new Act to a person who is deemed to have obtained a license under the new Act pursuant to the provisions of the preceding two paragraphs, the day on which the person obtained a license under the former Act (for a person whose two or more licenses are deemed to be one license pursuant to the provisions of the preceding paragraph, the day on which the person obtained the last license of the two or more licenses) is deemed to be the day on which the person obtained a license under the new Act.
- (4) The conditions attached to a license under the former Act pursuant to the provisions of Article 42, paragraph (1) of the former Act is deemed to be the conditions attached to a license under the new Act pursuant to the provisions of Article 127, paragraph (1) of the new Act.
- (5) With regard to the application of the provisions of Article 24, paragraph (1), items (iii) and (iv), Article 129, paragraph (1), item (v), item (viii) and paragraph (2), Article 136-6, paragraph (1), item (i), Article 136-8, item (ii), Article 136-9, paragraph (1), item (i), Article 136-28, paragraph (1), item (i), Article 136-32, paragraph (1), item (i), Article 136-43, paragraph (1), items (iv) and (v), and Article 136-52 of the new Act to a person who has had their license under the former Act revoked pursuant to the provisions of Article 52, paragraph (1) or Article 123 of the former Act, the person is deemed to have had their license under the new Act revoked pursuant to the provisions of Article 136-27, paragraph (1) or Article 136-32, paragraph (1) of the new Act on the day of the revocation.

(Transitional Measures for the Establishment of Secondary Business Offices)

Article 5 When a license under Article 46, paragraph (1) has been obtained prior to the date of enforcement for the cases set forth in paragraph (1), item (ii) or (iii) of that Article of the former Act, in which a secondary business office is established or the location of the head office or a secondary business office is changed after the date of enforcement, the notification under the provisions of Article 132, paragraph (1) of the new Act is not necessary.



(Transitional Measures for Sales Representatives)

Article 6 (1) A futures commission merchant (meaning one prescribed in Article 41, paragraph (3) of the former Act; the same applies hereinafter) who has, at the time of the enforcement of this Act, already obtained registration as sales representative (meaning one prescribed in Article 91-2, paragraph (1) of the former Act; the same applies hereinafter) granted by an exchange under the former Act pursuant to the provisions of Article 91-2, paragraph (1) of the former Act is deemed to have obtained the registration granted by the competent minister pursuant to the provisions of Article 136-4, paragraph (1) of the new Act.

(2) An exchange under the former Act must notify the particulars for which it has obtained registration pursuant to the provisions of Article 91-2, paragraph (1) of the former Act to the competent minister within 10 days from the date of enforcement.

(3) With regard to the application of the provisions of Article 136-4, paragraph (7) of the new Act to a futures commission merchant that is deemed to have obtained the registration as sales representative pursuant to the provisions of paragraph (1) of that Article pursuant to the provisions of paragraph (1), the day on which the last registration under the provisions of Article 91-2, paragraph (1) of the former Act was obtained by the futures commission merchant is deemed to be the day on which they obtained the registration under the provisions of Article 136-4, paragraph (1) of the new Act.

(Transitional Measures for Restriction on the Use of the Name of Commodity Futures Association)

Article 7 The provisions of Article 136-39 of the new Act do not apply to a person who was, at the time of the enforcement of this Act, using words which could give rise to the misconception that the person is a commodity futures association or its member in their name, for six months after the enforcement of this Act.

(Transitional Measures for the Futures Commission Merchant Association)

Article 8 (1) If the futures commission merchant association prescribed in Article 54-3, paragraph (1) of the former Act (hereinafter referred to as the "association under the former Act") has already been established at the time of the enforcement of this Act, the association under the former Act may change its articles of incorporation and obtain the authorization of the competent minister, pursuant to the provisions of Article 136-41 and Article 136-44 of the new Act, even prior to the date of enforcement.

(2) If the association under the former Act seeks to obtain the authorization referred to in the preceding paragraph, it must establish sanction rules and

dispute resolution rules and obtain authorization of the competent minister for those rules at the same time.

(3) The provisions of Article 136-43, paragraph (1), item (i) of the new Act apply *mutatis mutandis* to the authorization referred to in the preceding paragraph.

(4) The changes to the articles of incorporation that obtained the authorization referred to in paragraph (1) and the sanction rules and dispute resolution rules that obtained the authorization referred to in paragraph (2) come into effect on the date of enforcement.

(Transitional Measures for Penal Provisions)

Article 9 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 10 Beyond what is provided for in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

**Supplementary Provisions [Act No. 107 of June 15, 1998 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of December 1, 1998; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

(i) The provisions that add one Chapter after Chapter IV of the Securities Exchange Act (limited to the part related to Article 79-29, paragraph (1)) in Article 1 and the provisions amending Article 189, paragraphs (2) and (4) of that Act; the provisions of Article 21; the provisions amending Part II, Chapter X, Section 2, Subsection 1 of the Insurance Business Act (limited to the part related to Article 265-6) in Article 22; the provisions of Article 23 and the provisions of Article 25 of this Act; and the provisions of Article 40, Article 42, Article 58, Article 136, Article 140, Article 143, Article 147, Article 149, Article 158, Article 164, Article 187 (excluding the provisions amending Article 4, item (lxxix) of the Act for Establishment of the Ministry of Finance (Act No. 144 of 1949)), and Articles 188 through 190 of the Supplementary Provisions: July 1, 1998.

(Effect of Dispositions)

Article 188 The dispositions made, the procedures taken, and other acts performed pursuant to the provisions of the respective laws prior to

amendment (including orders based on those laws; hereinafter the same applies in this Article) prior to the enforcement of this Act (for the provisions set forth in each item of Article 1 of the Supplementary Provisions, the relevant provisions), for which corresponding provisions exist in the amended laws, are deemed to have been made, taken, or performed pursuant to the corresponding provisions of the respective laws after the amendment, unless otherwise provided for by these Supplementary Provisions.

(Transitional Measures for the Application of Penal Provisions)

Article 189 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act (for the provisions set forth in each item of Article 1 of the Supplementary Provisions, the relevant provisions) and acts committed after the enforcement of this Act for which the provisions previously in force are to remain applicable pursuant to the provisions of these Supplementary Provisions and for which the provisions prior to the amendment are to remain in force pursuant to the provisions of these Supplementary Provisions.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 190 In addition to what is provided for in Articles 2 through 146, Article 153, Article 169, and the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(Review)

Article 191 (1) If the government finds it necessary in light of the implementation status of the systems regarding special measures for protecting insurance policyholders and the state of soundness of management of the insurance companies pursuant to the provisions of the New Insurance Business Act, the government is to take necessary measures for maintaining the credibility of the insurance business even after the enforcement of this Act. (2) Except for what is provided for in the preceding paragraph, the government is to review the financial systems after the amendment by this Act within five years after the enforcement of this Act, by taking into account the implementation status of the the provisions amended by this Act and the changes in social and economic situations surrounding the financial systems, and, when the government finds it necessary, is to take the required measures based on the results of the review.

**Supplementary Provisions [Act No. 102 of July 16, 1999 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the date on which the Act Partially Amending the Cabinet Act (Act No. 88 of 1999) comes into effect; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

(i) The provisions of Article 10, paragraphs (1) and (5), Article 14, paragraph (3), Article 23, Article 28, and Article 30 of the Supplementary Provisions: the date of promulgation.

(Succession of Status of an Official)

Article 3 A person who, at the time of the enforcement of this Act, is an official (excluding the chairperson and member of councils, etc. referred to in Article 8 of the National Government Organization Act (Act No. 120 of 1948), a member of the central disaster prevention council, the chairperson and member of the Japanese Industrial Standards Committee, and persons specified by Cabinet Order as being similar to them) of the former Prime Minister's Office, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Education, the Ministry of Health and Welfare, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of International Trade and Industry, the Ministry of Transport, the Ministry of Posts and Telecommunications, the Ministry of Labor, the Ministry of Construction, or the Ministry of Home Affairs (hereinafter referred to as the "former Ministry or Agency" in this Article) is to, unless an appointment is announced separately, become a relevant official of the Cabinet Office, the Ministry of Internal Affairs and Communications, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Health, Labour and Welfare, the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Economy, Trade and Industry, the Ministry of Land, Infrastructure, Transport and Tourism, or the Ministry of the Environment after the enforcement of this Act (hereinafter referred to as the "new Ministry or Agency" in this Article), or a department established thereunder, which is specified by Cabinet Order as the new Ministry or Agency or the department established thereunder that corresponds to the former Ministry or Agency or the department established thereunder to which the official belongs at the time of the enforcement of this Act, with the same working conditions.

(Transitional Measures Specified Separately)

Article 30 Beyond what is provided for in Article 2 through the preceding Article, transitional measures necessary for the enforcement of this Act are specified

separately by laws.

**Supplementary Provisions [Act No. 125 of August 13, 1999 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

**Supplementary Provisions [Act No. 151 of December 8, 1999 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of April 1, 2000.

Article 4 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

**Supplementary Provisions [Act No. 160 of December 22, 1999 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act (excluding Article 2 and Article 3) comes into effect as of January 6, 2001.

**Supplementary Provisions [Act No. 96 of May 31, 2000 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of December 1, 2000 (hereinafter referred to as the "date of enforcement").

(Effect of Dispositions)

Article 49 The dispositions made, procedures taken, and other acts performed pursuant to the provisions of the respective laws before the amendment prior to the enforcement of this Act (for the provisions set forth in the items of Article 1 of the Supplementary Provisions, the relevant provisions) for which corresponding provisions exist in the amended laws, are deemed to have been made, taken, or performed pursuant to the corresponding provisions of the respective laws after the amendment, unless otherwise provided for by these Supplementary Provisions.

(Transitional Measures for the Application of Penal Provisions)

Article 50 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 51 In addition to what is provided for in Articles 2 through 11 and the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(Review)

Article 52 When five years have elapsed after the enforcement of this Act, the government is to review the systems regarding securities exchanges prescribed in Article 2, paragraph (16) of the new Securities Exchange Act and financial futures exchanges prescribed in Article 2, paragraph (6) of the new Financial Futures Trading Act, by taking into account the implementation status of the new Securities Exchange Act and the new Financial Futures Trading Act and the changes in social and economic situations, and, when the government deems it necessary, is to take any required measures based on the results of the review.

**Supplementary Provisions [Act No. 129 of November 28, 2001 Extract]  
[Extract]**

(Effective Date)

(1) This Act comes into effect as of April 1, 2002.

(Transitional Measures for the Application of Penal Provisions)

(2) Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act and acts committed after the enforcement of this Act for which the provisions previously in force are to remain applicable pursuant to the provisions of this Act.

**Supplementary Provisions [Act No. 45 of May 29, 2002]**

(Effective Date)

(1) This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

(Transitional Measures)

(2) When the date of enforcement of this Act is prior to the date of enforcement of the provisions of Article 2 of the Act Partially Amending the Agricultural

Cooperatives Act (Act No. 94 of 2001), the term "Article 30, paragraph (12)" in the provisions amending Article 30, paragraph (12) of the Agricultural Cooperatives Act in Article 9 is replaced with "Article 30, paragraph (11)".

**Supplementary Provisions [Act No. 54 of May 30, 2003 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of April 1, 2004.

(Transitional Measures for the Application of Penal Provisions)

Article 38 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 39 Beyond what is provided for in this Act, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(Review)

Article 40 When five years have elapsed after the enforcement of this Act, the government is to review the financial systems amended by this Act, taking into account the implementation status of the provisions amended by this Act and the changes in social and economic situations, and, when the government deems it necessary, is to take any required measures based on the results of the review.

**Supplementary Provisions [Act No. 43 of May 12, 2004 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item:

- (i) the provisions which change Chapter VI to Chapter VII and add one Chapter before that Chapter (limited to the part related to Article 299 and Article 314): the day on which the first registration under Article 293 of the Commodity Exchange Act amended by this Act (hereinafter referred to as the "new Act") becomes effective;
- (ii) the provisions of Article 5, Article 7, paragraph (1), Article 14, paragraphs (1) and (2), Article 18, Article 19, paragraphs (1) through (4), and paragraph (7), and Article 23 of the Supplementary Provisions: the date of promulgation of this Act;

- (iii) the provisions of Article 30 and Article 33 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding nine months from the date of promulgation; and
- (iv) the provisions of Article 31 of the Supplementary Provisions: the date of the promulgation of the Act for Partial Revision of the Commercial Code, etc. for Introducing a System of Electronic Public Notice (Act No. 87 of 2004) or the date of promulgation of this Act, whichever comes later.

(Transitional Measures for the Permission for a Commodity Exchange)

Article 2 A commodity exchange which has, at the time of the enforcement of this Act, already obtained the permission under Article 8-2 of the Commodity Exchange Act prior to the amendment by this Act (hereinafter referred to as the "former Act") is deemed to be a member commodity exchange established with the permission under Article 9 of the new Act.

(Transitional Measures for the Registration of a Commodity Exchange)

Article 3 The information registered in a commodity exchange register referred to in Article 109, paragraph (2) of the former Act concerning a commodity exchange prior to the enforcement of the new Act pursuant to the provisions of Articles 102 through 108 of the former Act is deemed to have been registered in a member commodity exchange register referred to in Article 25, paragraph (2) of the new Act on the date of enforcement of this Act (hereinafter referred to as the "date of enforcement") pursuant to the provisions of Articles 20 through 24, Article 72, Article 73, or Article 147 of the new Act.

(Transitional Measures for Membership Guarantee Funds)

Article 4 The membership guarantee funds (excluding those required to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of Article 9 of the Supplementary Provisions) which have already been deposited pursuant to the provisions of Article 38, paragraph (1) of the former Act at the time of the enforcement of this Act is deemed to be guarantee funds deposited pursuant to the provisions of Article 101, paragraph (1) of the new Act.

(Transitional Measures for Changes in Articles of Incorporation of Commodity Exchanges)

Article 5 A commodity exchange must make changes to its articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules pursuant to the provisions of Article 155 and Article 156 of the new Act which are necessary for the enforcement of this Act and obtain the authorization of



the competent minister by the date of enforcement. In such a case, the authorization becomes effective as of the date of enforcement.

(Transitional Measures for Clearing Margins)

Article 6 (1) The clearing margins (limited to those for transactions conducted on a commodity exchange member's own account and excluding those to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of Article 9 of the Supplementary Provisions) which have already been deposited pursuant to the provisions of Article 79, paragraph (1) of the former Act at the time of the enforcement of this Act are deemed to be clearing margins which are deposited pursuant to the provisions of Article 103, paragraph (1) of the new Act (limited to those required to be deposited by a member, etc. set forth in item (i) of that paragraph for transactions in a commodity market conducted on their own account in the case set forth in that item) if the clearing margins are for transactions for which settlement is made by the method set forth in Article 105, item (i) of the new Act, and are deemed to be clearing margins which are deposited pursuant to the provisions of Article 179, paragraph (1) of the new Act (in the case set forth in item (i) of that paragraph, limited to those to be deposited by a member, etc. set forth in (a) of that item for transactions in a commodity market conducted on the member's own account in the case set forth in (a) of that item, and in the case set forth in item (ii) of that paragraph, limited to those required to be deposited by a member, etc. set forth in (a) of that item for commodity clearing transactions which the member, etc. entrusts to a clearing participant based on their own account in the case set forth in (a) of that item) if the clearing margins are for transactions for which settlement is made by the method set forth in Article 105, item (ii) of the new Act.

(2) A commodity exchange must return the clearing margins (limited to those for transactions entrusted by a person to a member of the commodity exchange which is to be conducted on the person's own account and excluding those to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of Article 9 of the Supplementary Provisions) which have already been, at the time of the enforcement of this Act, deposited pursuant to the provisions of Article 79, paragraph (1) of the former Act, without delay, to the member who deposited the clearing margins after the enforcement of this Act.

(Transitional Measures for the Business of Assuming Commodity Transaction Debts)

Article 7 (1) If a commodity exchange which has conducted a business equivalent to the business of assuming commodity transaction debts (meaning the

business of assuming commodity transaction debts prescribed in Article 2, paragraph (12) of the new Act; the same applies hereinafter) pursuant to the provisions of Article 81, paragraph (2) of the former Act prior to the enforcement of this Act seeks to continue to conduct the business, the commodity exchange must obtain the approval of the competent minister by the date of enforcement pursuant to the provisions of Article 173 of the new Act. In such a case, the approval becomes effective as of the date of enforcement.

- (2) When a commodity exchange has obtained approval pursuant to the provisions of the preceding paragraph, the special clearing funds (limited to those deposited by a member who became a clearing participant of the commodity exchange as a commodity clearing organization on the date of enforcement, and excluding those required to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of Article 9 of the Supplementary Provisions) which have already been deposited with the commodity exchange pursuant to the provisions of Article 81, paragraph (3) of the former Act at the time of the enforcement of this Act are deemed to be clearing deposits deposited with the commodity exchange as the commodity clearing organization pursuant to the provisions of Article 180, paragraph (1) of the new Act.
- (3) Out of the special clearing funds which have already been deposited pursuant to the provisions of Article 81, paragraph (3) of the former Act at the time of the enforcement of this Act, a commodity exchange must return the portion other than what are deemed to be clearing deposits pursuant to the provisions of the preceding paragraph (excluding the portion required to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of Article 9 of the Supplementary Provisions) to the member who deposited the special clearing fund, without delay, after the enforcement of this Act.

(Transitional Measures for Special Collateral Money)

Article 8 The special collateral money (excluding that required to be allocated for damages, for which the provisions previously in force are to remain applicable pursuant to the provisions of the following Article) which has already been deposited pursuant to the provisions of Article 84-2, paragraph (1) of the former Act at the time of the enforcement of this Act is deemed to be special collateral money deposited pursuant to the provisions of Article 109, paragraph (1) of the new Act.

(Transitional Measures for Compensation for Damages due to Default)

Article 9 Prior laws continue to govern the compensation for damages caused by

a member of a commodity exchange to other members or to the commodity exchange due to non-performance of obligations arising from the transactions in a commodity market prior to the date of enforcement.

(Transitional Measures for Security Money for Acceptance of Consignment)

Article 10 (1) A commodity exchange must return the security money for acceptance of consignment (excluding those related to payment or recovery, for which the provisions previously in force are to remain applicable pursuant to the provisions of the following paragraph or paragraph (3)) which has already been deposited pursuant to the provisions of Article 97-2, paragraph (1) of the former Act at the time of the enforcement of this Act, to the member who deposited the security money for acceptance of consignment, without delay, after the enforcement of this Act.

(2) Prior laws continue to govern the payment of security money for acceptance of consignment for a claim which was made pursuant to the provisions of Article 97-3, paragraph (1) of the former Act prior to the date of enforcement by a person who entrusted transactions in a commodity market to a member of a commodity exchange.

(3) Prior laws continue to govern the payment and recovery of security money for acceptance of consignment deposited by a person that was a futures commission merchant when the permission under Article 126, paragraph (1) of the former Act ceased to be effective or the permission under that paragraph was revoked prior to the date of enforcement.

(Transitional Measures for Completion of the Settlement of Transactions)

Article 11 If the permission under Article 126, paragraph (1) of the former Act was revoked, the permission under that paragraph ceased to be effective, or acceptance of consignment of transactions in a commodity market was suspended pursuant to the provisions of the former Act or the articles of incorporation of a commodity exchange, prior to the date of enforcement, or the permission under that paragraph ceased to be effective on the effective date (excluding cases in which the permission under Article 126, paragraph (1) of the former Act ceased to be effective pursuant to the provisions of Article 14, paragraph (4) of the Supplementary Provisions) and the person that was a futures commission merchant has not completed settlement of transactions in a commodity market related to the consignment by the date of enforcement, the provisions previously in force remain applicable with regard to the transactions.

(Supervisory Disposition and Penal Provisions for Commodity Exchanges)

Article 12 (1) If a commodity exchange has violated the provisions of Article 5,

Article 6, paragraph (2), Article 7, paragraph (3), or Article 10, paragraph (1) of the Supplementary Provisions, the competent minister may revoke the permission for its establishment or order suspension of all or a part of its business for a fixed period not exceeding one year.

- (2) If a commodity exchange has violated the disposition under the provisions of the preceding paragraph, the representative, agent, employee, or other worker of the commodity exchange is subject to punishment by imprisonment for not more than two years or by a fine of not more than three million yen, or both.
- (3) If the representative, agent, employee, or other worker of a commodity exchange has committed a violation set forth in the preceding paragraph concerning the business or property of the commodity exchange, not only the offender is subject to punishment but also the exchange is subject to punishment by a fine of not more than 300 million yen.

(Transitional Measures for Consignor Margins)

Article 13 (1) A futures commission merchant must deposit money and securities (excluding those specified by order of the competent ministry) which have already been, at the time of the enforcement of this Act, deposited as consignor margins pursuant to the provisions of Article 97, paragraph (1) of the former Act, with a commodity exchange that has opened the commodity market related to the transactions in the case settlement of the transactions is to be made by the method set forth in Article 105, item (i) of the new Act, and with a commodity exchange which conducts the business of assuming commodity transaction debts for the transactions in the case settlement of the transactions is to be made by the method set forth in item (ii) of that Article, without delay after the enforcement of this Act.

- (2) Money and securities deposited with a commodity exchange pursuant to the provisions of the preceding paragraph are deemed to be clearing margins which are deposited pursuant to the provisions of Article 103, paragraph (1) of the new Act (limited to those required to be deposited by a consignor set forth in item (ii) of that paragraph in the case set forth in that item) with regard to transactions whose settlement is to be made by the method set forth in the Article 105, item (i) of the new Act, and deemed to be clearing margins which are deposited pursuant to the provisions of Article 179, paragraph (1) of the new Act (in the case set forth in item (i) of that paragraph, limited to those required to be deposited by a consignor set forth in (b) of that item in the case set forth in (b) of that item, and in the case set forth in item (ii) of that paragraph, limited to those required to be deposited by a person entrusting clearing brokerage set forth in (b) of that item in the case set forth in (b) of that item) with regard to transactions whose settlement is made by the method set forth in Article 105, item (ii) of the new Act.

- (3) If a futures commission merchant has violated the provisions of paragraph (1), the competent minister may revoke the license of the futures commission merchant under Article 190 of the new Act, order the suspension of transactions in a commodity market or business of accepting consignment of commodity transactions (meaning the business of accepting consignment of commodity transactions prescribed in Article 2, paragraph (17) of the new Act; the same applies hereinafter) for a fixed period not exceeding six months, order a change of the method of the business of accepting consignment of commodity transactions, or order other particulars necessary for supervision.
- (4) A person who has violated an order under the provisions of the preceding paragraph is subject to punishment by imprisonment for not more than two years or a fine of not more than three million yen, or both.
- (5) If the representative, agent, employee, or other worker of a futures commission merchant has committed a violation referred to in the preceding paragraph concerning the business or property of the futures commission merchant, not only the offender is subject to punishment but also the futures commission merchant is subject to punishment by a fine of not more than 300 million yen.

(Transitional Measures for the License for Futures Commission Merchants)

- Article 14 (1) A person who seeks to obtain a license under Article 190, paragraph (1) of the new Act may file an application for the license pursuant to the provisions of Article 192 of the new Act even prior to the date of enforcement.
- (2) If an application for a license has been filed pursuant to the provisions of the preceding paragraph, the competent minister may grant the license pursuant to the provisions of Articles 190 through 194 of the new Act even prior to the date of enforcement. In such a case, a person who has obtained the license is deemed to have obtained the license under Article 190, paragraph (1) of the new Act on the date of enforcement.
  - (3) If a disposition has not been rendered for an application for a license under paragraph (1) at the time of the enforcement of this Act, a person who has filed the application (limited to a person who has already obtained a license under Article 126, paragraph (1) of the former Act at the time of the enforcement of this Act) is deemed to have obtained the license under Article 190, paragraph (1) of the new Act, until the disposition is rendered.
  - (4) With regard to a person who is deemed to have obtained the license under Article 190, paragraph (1) of the new Act pursuant to the provisions of the preceding two paragraphs, the license under Article 126, paragraph (1) of the former Act ceases to be effective on the date of enforcement.

(Transitional Measures for Public Notice of Discontinuation of Business)

Article 15 The provisions of Article 197, paragraph (3) of the new Act apply to discontinuation, merger (limited to a merger in which the corporation surviving the merger or the corporation established by the merger does not engage in business of accepting consignment of commodity transactions), or dissolution due to any reason other than the merger or bankruptcy, of the business of accepting consignment of commodity transactions, on and after the day on which 30 days have elapsed from the date of enforcement.

(Transitional Measures for Delivery of a Document and Explanation Prior to the Conclusion of Entrustment Contracts)

Article 16 The provisions of Article 217 and Article 218 of the new Act apply to entrustment contracts (meaning entrustment contracts prescribed in Article 217, paragraph (1) of the new Act) which is concluded by a futures commission merchant after the enforcement of this Act.

(Transitional Measures for Registration of Sales Representatives)

Article 17 (1) A sales representative (limited to one concerning a person who is deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 14, paragraph (2) or (3) of the Supplementary Provisions) who has already been registered pursuant to the provisions of Article 136-4, paragraph (1) of the former Act at the time of the enforcement of this Act is deemed to have been registered pursuant to the provisions of Article 200, paragraph (1) of the new Act on the date of enforcement. In such a case, the provisions of paragraph (6) of that Article do not apply.

(2) In the case referred to in the preceding paragraph, the period prescribed in Article 200, paragraph (7) of the new Act is to be calculated from the day of registration or renewal of registration under the former Act.

(Transitional Measures for Establishment of a Consignor Protection Membership Corporation)

Article 18 (1) A person (limited to a person who has obtained a license in accordance with the provisions of Articles 190 through 194 of the new Act, pursuant to the provisions of Article 14, paragraph (2) of the Supplementary Provisions) who seeks to become a founder or a member of a consignor protection membership corporation (meaning a consignor protection membership corporation prescribed in Article 269, paragraph (4) of the new Act; the same applies hereinafter) may prepare articles of incorporation, hold an organizational meeting, and perform other acts necessary for establishing the consignor protection membership corporation and acts necessary for joining

the consignor protection membership corporation, pursuant to the provisions of Chapter VI, Section 2 of the new Act, even prior to the date of enforcement.

- (2) A consignor protection membership corporation established prior to the date of enforcement pursuant to the provisions of the preceding paragraph may file an application for registration under Article 293 of the new Act, file an application for the authorization of operational rules under Article 302, paragraph (1) of the new Act, and perform preparatory acts necessary for these applications, pursuant to the provisions of Chapter VI, Section 3 of the new Act, even prior to the date of enforcement.
- (3) If an application for registration under Article 293 of the new Act or an application for authorization for operational rules under Article 302, paragraph (1) of the new Act was filed pursuant to the provisions of the preceding paragraph, the competent minister may grant the registration or authorization even prior to the date of enforcement pursuant to the provisions of Articles 293 through 295, or Article 302 of the new Act. In such a case, the registration or authorization becomes effective as of the date of enforcement.

(Transitional Measures for Succession of Business to the Consignor Protection Fund)

- Article 19 (1) The Association of Compensation Funds for Consigned Liabilities in Commodity Futures, Inc. (hereinafter referred to as the "Association of Compensation Funds" in this Article) established on October 31, 1975 may propose to the consignor protection membership corporation that the consignor protection membership corporation should succeed to any and all businesses conducted by and any and all assets and liabilities held by the Association of Compensation Funds until the date specified by Cabinet Order.
- (2) If a proposal under the provisions of the preceding paragraph has been made, a consignor protection membership corporation must obtain authorization at a general meeting (meaning a general meeting prescribed in Article 285, paragraph (1) of the new Act; the same applies in the following paragraph and paragraph (4)) of the consignor protection membership corporation when it seeks to approve the proposal.
  - (3) In cases where a consignor protection membership corporation files an application for registration under Article 293 of the new Act (including registration pursuant to the provisions of Article 293 of the new Act which is to be made prior to the date of enforcement pursuant to the provisions of paragraph (3) of the preceding Article; hereinafter the same applies in this Article), and when the corporation has already obtained a resolution of approval of a general meeting pursuant to the provisions of the preceding paragraph, it must file an application with the competent minister for approval for succession from the Association of Compensation Funds, together with an

application for the registration.

- (4) When a consignor protection membership corporation has obtained a resolution of approval of a general meeting pursuant to the provisions of paragraph (2) after applying for registration under Article 293 of the new Act, the corporation must file an application for the authorization from the competent minister without delay.
- (5) When authorization under paragraph (3) or the preceding paragraph has been granted, business operated by and assets and liabilities held by the Association of Compensation Funds are to be succeeded by the consignor protection membership corporation (referred to as the "consignor protection fund" in paragraphs (8) and (9)) as a consignor protection fund (meaning the consignor protection fund prescribed in Article 296 of the new Act; the same applies hereinafter) on the day on which the consignor protection membership corporation received the authorization (when the day is before the day on which the consignor protection membership corporation related to the authorization received registration under Article 293 of the new Act (or when the day is before the date of enforcement in cases where the consignor protection membership corporation received registration in accordance with the provisions of Article 293 of the New Act prior to the effective date pursuant to the provisions of paragraph (3) of the preceding Article), on the date of enforcement), and the Association of Compensation Funds is to be dissolved at that time. In such a case, the provisions on the dissolution and liquidation of corporations in other laws and regulations do not apply.
- (6) The registration of dissolution when the Association of Compensation Funds has been dissolved pursuant to the provisions of the preceding paragraph is specified by Cabinet Order.
- (7) With regard to the application of the provisions of Article 295, paragraph (1) (limited to the part related to item (i)) when a consignor protection membership corporation has simultaneously filed an application for registration under Article 293 of the new Act and an application for authorization for succession from the Association of Compensation Funds pursuant to the provisions of paragraph (3), the term "is" in that item is deemed to be replaced with "is (with regard to an application for registration filed together with an application for authorization pursuant to the provisions of Article 19, paragraph (3) of the Supplementary Provisions of the Act for Partial Revision of the Commodity Exchange Act (Act No. 43 of 2004), calculation is to be done by including the assets and liabilities held by the Association of Compensation Fund related to the application for authorization, if the competent minister seeks to grant the authorization)".
- (8) The consignor protection fund which succeeded to the businesses of the Association of Compensation Funds pursuant to the provisions of paragraph (5)



may conduct businesses of the Association of Compensation Funds related to the succession (referred to as "succeeded businesses" in the following paragraph), notwithstanding the provisions of Article 301 of the new Act.

- (9) If the consignor protection fund referred to in the preceding paragraph conducts business specified by order of the competent ministry as being similar to the business set forth in Article 269, paragraph (3), item (i) of the new Act among the succeeded businesses, the business is deemed to be business set forth in that item.

(Transitional Measures for Restriction on the Use of the Name of Consignor Protection Fund)

Article 20 (1) The provisions of Article 271, paragraph (2) of the new Act do not apply to a person who has already been using the words for "consignor protection membership corporation" in their name at the time of the enforcement of this Act, until the day on which six months have elapsed from the date of enforcement.

- (2) The provisions of Article 297, paragraph (2) of the new Act do not apply to a person who has already been using the words for "consignor protection fund" in their name at the time of the enforcement of this Act, until the day on which six months have elapsed from the date of enforcement.

(Effect of Dispositions)

Article 21 The dispositions made, procedures taken, and other acts performed pursuant to the provisions of the former Act prior to the date of enforcement, for which corresponding provisions exist in the new Act, are deemed to have been made, taken, or performed pursuant to the corresponding provisions of the new Act, except as otherwise provided by these Supplementary Provisions.

(Transitional Measures for the Application of Penal Provisions)

Article 22 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the date of enforcement.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 23 In addition to what is provided for in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act (including transitional measures for penal provisions) are specified by Cabinet Order.

(Review)

Article 24 The government is to review the commodity exchange system revised by this Act within five years after the enforcement of this Act, taking into

account of the implementation status of the provisions amended by this Act and the changes in social and economic situations surrounding the commodity futures markets, and when the government finds it necessary, is to take the required measures based on the results of the review,.

**Supplementary Provisions [Act No. 76 of June 2, 2004 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the date on which the Bankruptcy Act (Act No. 75 of 2004; referred to as the "new Bankruptcy Act" in paragraph (8) of the following Article, and Article 3, paragraph (8), Article 5, paragraph (8), paragraphs (16), and (21), Article 8, paragraph (3) and Article 13 of the Supplementary Provisions) comes into effect.

(Delegation to Cabinet Order)

Article 14 In addition to what is provided for in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

**Supplementary Provisions [Act No. 87 of June 9, 2004 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

**Supplementary Provisions [Act No. 88 of June 9, 2004 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding five years from the date of promulgation (hereinafter referred to as the "date of enforcement").

(Transitional Measures for the Application of Penal Provisions)

Article 135 With regard to the application of penal provisions to acts committed prior to the enforcement of this Act and acts committed after the enforcement of this Act for which the provisions previously in force are to remain applicable pursuant to the provisions of these Supplementary Provisions and for which the provisions prior to the amendment are to remain in force, prior laws continue to govern.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 136 In addition to what is provided for in these Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(Review)

Article 137 When five years have elapsed after the enforcement of this Act, the government is to review the settlement system regarding transactions of shares amended by this Act, taking into account of the implementation status of the provisions amended by this Act and the changes in social and economic situations, and when the government finds it necessary, is to take the required measures based on the results of the review.

**Supplementary Provisions [Act No. 124 of June 18, 2004 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the date on which the new Real Property Registration Act comes into effect.

(Transitional Measures)

Article 2 If the date of enforcement of this Act comes after the date of enforcement of the Act Concerning the Protection of Personal Information Held by Administrative Organs, the term "Article 114-3" in the provisions amending Article 114-3, and Articles 117 through 119 of the Commercial Registration Act in Article 52 is deemed to be replaced with "Article 114-4".

**Supplementary Provisions [Act No. 147 of December 1, 2004 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

**Supplementary Provisions [Act No. 154 of December 3, 2004 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation (hereinafter referred to as the "date of enforcement").

(Effect of Dispositions)

Article 121 The dispositions made, procedures taken, and other acts performed pursuant to the provisions of the respective laws (including orders based on them; hereinafter the same applies in this Article) prior to the enforcement of this Act, for which corresponding provisions exist in the respective Acts after the amendment, are deemed to have been made, taken, or performed pursuant to the corresponding provisions of the respective laws after the amendment, except as otherwise provided by these Supplementary Provisions.

(Transitional Measures for Penal Provisions)

Article 122 With regard to the application of penal provisions to acts committed after the enforcement of this Act to acts committed prior to the enforcement of this Act, acts for which the provisions previously in force are to remain applicable pursuant to the provisions of these Supplementary Provisions, and acts for which the provisions prior to the amendment are to remain in force pursuant to the provisions of these Supplementary Provisions, prior laws continue to govern.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 123 In addition to what is provided for in these Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(Review)

Article 124 The government is to review the implementation status of this Act within three years after the enforcement of this Act, and when the government finds it necessary, is to take any required measures based on the results of the review.

**Supplementary Provisions [Act No. 159 of December 8, 2004 Extract]  
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as of July 1, 2005.

**Supplementary Provisions [Act No. 87 of July 26, 2005 Extract] [Extract]**

This Act comes into effect as of the date on which the Companies Act comes into effect.

**Supplementary Provisions [Act No. 50 of June 2, 2006]**

This Act comes into effect as of the date on which the Act on General Incorporated Associations and General Incorporated Foundations comes into effect.

**Supplementary Provisions [Act No. 65 of June 14, 2006 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year and six months from the date of promulgation (hereinafter referred to as the "date of enforcement"); provided, however, that the provisions set forth in the following items comes into effect as of the date specified in each item:

- (i) the provisions of Article 1; the provisions amending Article 30-4, paragraph (2), item (ii) of the Agricultural Cooperatives Act in Article 8 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv) , or item (vii), or paragraph (2), Article 198, items (i) through (x), item (xviii) or item (xix)" to "Article 197, Article 197-2, items (i) through (x), or item (xiii), Article 198, item (viii)"); the provisions amending Article 34-4, paragraph (2), item (ii) of the Fisheries Cooperatives Act in Article 9 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv), or item (vii), or paragraph (2), Article 198, items (i) through (x), item (xviii) or (xix)" to "Article 197, Article 197-2, items (i) through (x) , or item (xiii), Article 198, item (viii)"); the provisions amending Article 5-4, item (iv) of the Act on Financial Businesses by Cooperatives in Article 11 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv), or item (vii), or paragraph (2)" to "Article 197" and the phrase "Article 198, items (i) through (x), item (xviii) or (xix) (Offense of Solicitation Without Notification of Securities)" to "Article 197-2, items (i) through (x), or item (xiii) (Offense of Solicitation Without Notification of Securities), Article 198, item (viii) (Offense of Violation of Prohibition or Suspension Order by a Court)"); the provisions amending Article 34, item (iv) of the Shinkin Bank Act in Article 13 (limited to the part that amend the phrase "Article 197, paragraph (1), items (i) through (iv), or item (vii), or paragraph (2)" to "Article 197" and the phrase "Article 198, items (i) through (x), item (xviii) or (xix) (Offense of Solicitation Without Notification of Securities)" to "Article 197-2, items (i) through (x), or item (xiii) (Offense of Solicitation Without Notification of Securities), Article 198, item (viii) (Offense of Violation of Prohibition or Suspension Order by a Court)"); the provisions amending Article 34, item (iv) of the Labor Bank Act in Article 15 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv), or

item (vii), or paragraph (2)" to "Article 197" and "Article 198, items (i) through (x), item (xviii) or item (xix) (Offense of Solicitation Without Notification of Securities)" to "Article 197-2, items (i) through (x), or item (xiii) (Offense of Solicitation Without Notification of Securities), Article 198, item (viii) (Offense of Violation of Prohibition or Suspension Order by a Court)"); the provisions amending Article 53-2, paragraph (1), item (iii) of the Insurance Business Act in Article 18 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv), or item (vii), or paragraph (2)" to "Article 197" and "Article 198, items (i) through (x), item (xviii) or item (xix) (Offense of Solicitation Without Notification of Securities)" to "Article 197-2, items (i) through (x), or item (xiii) (Offense of Solicitation Without Notification of Securities), Article 198, item (viii) (Offense of Violation of Prohibition or Suspension Order by a Court)"); the provisions amending Article 24-4, item (iv) of the Norinchukin Bank Act in Article 19 (limited to the part that amends the phrase "Article 197, paragraph (1), items (i) through (iv), or item (vii), or paragraph (2), Article 198, items (i) through (x), item (xviii) or item (xix)" to "Article 197, Article 197-2, items (i) through (x), or item (xiii), Article 198, item (viii)"); the provisions of Article 2, Article 4, Article 182, paragraph (1), Article 184, paragraph (1), Article 187, paragraph (1), Article 190, paragraph (1), Article 193, paragraph (1), Article 196, paragraph (1), and Article 198, paragraph (1) of the Supplementary Provisions: the day on which 20 days have elapsed from the date of promulgation;

(ii) the provisions of Article 3 of the Supplementary Provisions: the date on which the Act for Partial Revision of the Penal Code in Order to Respond to the Internationalization and Organization of Crimes and the Sophistication of Information Processing (Act No. of 2006) comes into effect or the date of enforcement of the provisions set forth in the preceding item, whichever comes later;

(iii) the provisions of Article 2 (excluding the provisions amending Article 27-23 of the Securities and Exchange Act (excluding the part that adds the term "and Article 27-26" after "Article 27-25, paragraph (1)"); the provisions amending Article 27-24 of that Act; the provisions amending Article 27-25 of that Act; the provisions amending Article 27-26 of that Act (excluding the part that amends the phrase "controlling the business activities of a company which is an issuer of share certificates, etc." to "conducting acts specified by Cabinet Order as those that impose serious changes or have a serious impact on the business activities of the issuer of share certificates, etc. (referred to as "important proposal acts, etc." in paragraphs (4) and (5))" and the part that adds three paragraphs to that Article); the provisions amending Article 27-27 of that Act; and the provisions amending Article 27-30-2 of that Act

(excluding the part that amends the term "Article 27-10, paragraph (2)" to "Article 27-10, paragraphs (8) and (12)" and the part that adds the term "or paragraph (11)" after "Article 27-10, paragraph (1)"); the provisions of Article 7, Article 8, and Article 12 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation;

- (iv) the provisions amending Article 27-23 of the Securities and Exchange Act (excluding the part that adds the term "and Article 27-26" after "Article 27-25, paragraph (1)") in Article 2; the provisions amending Article 27-24 of that Act; the provisions amending Article 27-25 of that Act; the provisions amending Article 27-26 of that Act (excluding the part that amends the phrase "controlling the business activities of a company which is an issuer of share certificates, etc." to "conducting acts specified by Cabinet Order as those that impose serious changes or have a serious impact on the business activities of the issuer of share certificates, etc. (referred to as "important proposal acts, etc." in paragraphs (4) and (5))" and the part that adds three paragraphs to that Article); the provisions amending Article 27-27 of that Act; and the provisions amending Article 27-30-2 of that Act (excluding the part that amends the term "Article 27-10, paragraph (2)" to "Article 27-10, paragraphs (8) and (12)" and the part that adds the term "or paragraph (11)" after "Article 27-10, paragraph (1)"); the provisions of Articles 9 through 11, and Article 13 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation; and
- (v) the provisions of Article 4: the date on which the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) comes into effect.

(Transitional Measures upon Partial Revision of the Commodity Exchange Act)  
Article 189 (1) The provisions of the Commodity Exchange Act as amended by Article 12 (hereinafter referred to as the "new Commodity Exchange Act" in this Article) apply to business of accepting consignment of commodity transactions prescribed in Article 2, paragraph (17) of the new Commodity Exchange Act to be conducted after the enforcement of this Act, and prior laws continue to govern the business of accepting consignment of commodity transactions prescribed in Article 2, paragraph (17) of the Commodity Exchange Act prior to the amendment by Article 12 that has been conducted prior to the enforcement of this Act.

- (2) If a futures commission merchant (meaning a futures commission merchant prescribed in Article 2, paragraph (18) of the new Commodity Exchange Act) has provided explanation about the matters equivalent to those prescribed in

Article 217, paragraph (1) of the new Commodity Exchange Act pursuant to the provisions of Article 218, paragraph (1) of the new Commodity Exchange Act, prior to the enforcement of this Act, the provisions of the new Commodity Exchange Act apply by deeming that the explanation was the explanation that have been provided pursuant to the provisions of that paragraph.

(Delegation of Authority)

Article 216 (1) The Prime Minister delegates the authority under the provisions of these Supplementary Provisions (excluding the authority specified by Cabinet Order) to the Commissioner of the Financial Services Agency.

(2) A part of the authority delegated to the Commissioner of the Financial Services Agency pursuant to the provisions of the preceding paragraph may be delegated to the head of a Local Finance Bureau or the head of a Local Finance Branch Bureau, pursuant to the provisions of Cabinet Order.

(Effect of Dispositions)

Article 217 The dispositions made, procedures taken, and other acts performed pursuant to the provisions of the former Securities and Exchange Act, the former Investment Trust Act, or the former Trust Business Act, or pursuant to an order based on these Acts, prior to the enforcement of this Act, for which corresponding provisions exist in the new Financial Instruments and Exchange Act, are deemed to have been made pursuant to the corresponding provisions of the new Financial Instruments and Exchange Act, except as otherwise provided by these Supplementary Provisions.

(Transitional Measures for the Application of Penal Provisions)

Article 218 With regard to the application of penal provisions to acts committed prior to the enforcement of this Act (for the provisions set forth in the items of Article 1 of the Supplementary Provisions, the relevant provisions; hereinafter the same applies in this Article) and acts committed after the enforcement of this Act for which the provisions previously in force are to remain applicable pursuant to the provisions of these Supplementary Provisions and for which the provisions prior to the amendment are to remain in force pursuant to the provisions of these Supplementary Provisions, prior laws continue to govern.

(Delegation of Other Transitional Measures to Cabinet Order)

Article 219 (1) In addition to what is provided for in these Supplementary Provisions, transitional measures necessary for the enforcement of this Act are specified by Cabinet Order.

(2) The transitional measures necessary for the procedures for registration associated with the partial amendment of the Securities Exchange Act



pursuant to the provisions of Article 3 are specified by Cabinet Order.

(Review)

Article 220 The government is to review the implementation status of this Act within five years after the enforcement of this Act, and when the government finds it necessary, is to take the required measures based on the results of the review.

### **Supplementary Provisions [Act No. 74 of July 10, 2009 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year and six months from the date of promulgation (hereinafter referred to as the "date of enforcement"); provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item.

- (i) the provisions of Article 5, Article 17, paragraph (1), Article 24, Article 25, and Article 28 of the Supplementary Provisions; the date of promulgation of this Act;
- (ii) the provisions of Article 1 of this Act and Article 6 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding three months from the date of promulgation;
- (iii) The provisions of Article 2 of this Act and Article 4, Article 7, paragraphs (1) and (2), Article 8 (excluding paragraphs (1) and (7)), Article 14, Article 17, paragraphs (3) and (4), Articles 18 through 20, and Article 26 of the Supplementary Provisions; the provisions amending the Appended Table 1 of the Residential Basic Book Act (Act No. 81 of 1967) in Article 32 of the Supplementary Provisions (limited to the part in row (lxxx) that adds the phrase "authorization under Article 96-19, paragraph (1), notification under paragraph (3) of that Article (including as applied mutatis mutandis pursuant to Article 96-25, paragraph (4) and Article 96-31, paragraph (4) of that Act), authorization under Article 96-25, paragraph (1) or the proviso to paragraph (3), notification under Article 96-28, paragraph (3) or Article 96-29, authorization under Article 96-31, paragraph (1), of that Act" to "notification under Article 85, paragraph (1), that Act"; the provisions of Article 42 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

(Transitional Measures upon Appeal of the Act on the Consignment and Other Matters Relating to Futures Transaction in Foreign Commodity Markets)

Article 3 If a business operator engaged in futures transactions in foreign

commodity markets (meaning a business operator engaged in futures transactions in foreign commodity markets prescribed in Article 2, paragraph (5) of the Act on the Consignment and Other Matters Relating to Futures Transaction in Foreign Commodity Markets prior to the appeal pursuant to the provisions of the preceding Article (hereinafter referred to as the "former Act on Futures Transaction in Foreign Commodity Markets")) has not completed the performance of obligations based on buying or selling regarding a contract on futures transactions in foreign commodity markets prescribed in Article 2, paragraph (6) of the former Act on Futures Transaction in Foreign Commodity Markets which was entered into prior to the date of enforcement, the business operator may complete the performance of the obligations without obtaining permission under Article 190, paragraph (1) of the Commodity Derivatives Transaction Act as amended by the provisions of Article 3 (hereinafter referred to as the "new Act"). In such a case, the provisions of the former Act on Futures Transaction in Foreign Commodity Markets related to the performance of the obligations remain in force.

(Transitional Measures for the Report on Quotations and Transaction Volume)

Article 4 Prior laws continue to govern a report pursuant to the provisions of Article 112, paragraph (2) of the Commodity Exchange Act prior to the amendment by Article 2 that has not been made prior to the date of enforcement of the provisions set forth in Article 1, item (iii) of the Supplementary Provisions.

(Transitional Measures for Changes to Articles of Incorporation of Commodity Exchanges)

Article 5 A commodity exchange is to change its articles of incorporation, operational rules, entrustment contract regulations, dispute resolution rules, and market transactions surveillance committee rules in accordance with the provisions of Article 155 and Article 156 of the Commodity Exchange Act amended by the provisions of Article 1, which will be required upon the enforcement of this Act, and obtain the authorization of the competent minister by the date of enforcement of the provisions set forth in Article 1, item (ii) of the Supplementary Provisions. In such a case, the authorization becomes effective as of the date of enforcement of the provisions set forth in that item.

(Supervisory Dispositions and Penal Provisions for a Commodity Exchange)

Article 6 (1) If a commodity exchange has violated the provisions of the preceding Article, the competent minister may revoke the permission for its establishment or order suspension of all or a part of its business for a fixed period not exceeding one year.

- (2) If a commodity exchange has violated the disposition under the provisions of the preceding paragraph, the representative, agent, employee, or other worker of the commodity exchange who has committed the act is subject to punishment by imprisonment for not more than two years or by a fine of not more than three million yen, or both.
- (3) If the representative, agent, employee, or other worker of a commodity exchange has committed a violation referred to in the preceding paragraph, not only the offender is subject to punishment but also the commodity exchange is subject to punishment by a fine of not more than 300 million yen.

(Transitional Measures for the License of a Commodity Derivatives Business Operator)

- Article 7 (1) A person who seeks to obtain a license under Article 190, paragraph (1) of the new Act may file an application for the license pursuant to the provisions of Article 192 of the new Act even prior to the date of enforcement.
- (2) If an application for a license has been filed pursuant to the provisions of the preceding paragraph, the competent minister may grant the license pursuant to the provisions of Articles 190 through 194 of the new Act even prior to the date of enforcement. In such a case, the person who has obtained the license is deemed to have obtained the license under Article 190, paragraph (1) of the new Act on the date of enforcement.
  - (3) If a disposition has not been rendered for an application for a license under paragraph (1) at the time of the enforcement of this Act, a person who filed the application is deemed to have obtained a license under Article 190, paragraph (1) of the new Act until the disposition is rendered.
  - (4) If a person that was a futures commission merchant (meaning a futures commission merchant prescribed in Article 2, paragraph (18) of the Commodity Exchange Act prior to the amendment by Article 3 (hereinafter referred to as the "former Act"); the same applies hereinafter) (excluding those deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of the preceding two paragraphs) has not completed transactions in a commodity market related to the entrustment by the date of enforcement, the provisions previously in force remain applicable to the transactions.
  - (5) The provisions of Article 197, paragraph (5) of the new Act apply mutatis mutandis to cases in which a person that was a futures commission merchant (limited those deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of paragraph (3)) has been rendered a disposition that the license will not be granted for the application for the license under paragraph (1).

(Transitional Measures for Public Notice of Discontinuation of Business)

Article 8 (1) The provisions of Article 197, paragraph (3) of the new Act apply to the discontinuation of business (meaning commodity derivatives business prescribed in Article 2, paragraph (22) of the new Act; the same applies hereinafter), merger (limited to a merger in cases in which a corporation surviving the merger or a corporation established by the merger does not engage in commodity derivatives business), or dissolution due to reasons other than a merger or order of commencement of bankruptcy proceedings (hereinafter referred to as "discontinue, etc." in this Article) of commodity derivatives business on and after the day on which 30 days have elapsed from the date of enforcement, except in the cases prescribed in the following paragraph.

- (2) If a person that was a futures commission merchant prior to the date of enforcement and has filed an application for a license under paragraph (1) of the preceding Article (hereinafter referred to as a "specified futures commission merchant" in this Article) seeks to discontinue, etc. its commodity derivatives business, the specified futures commission merchant must, by 30 days prior to that day, give a public notice to that effect, as well as post a notice of that fact in a place easily seen by the public at all of its business offices pursuant to the provisions of Article 197, paragraph (3) of the new Act.
- (3) If a specified futures commission merchant has given a public notice under the provisions of the preceding paragraph, the specified futures commission merchant must immediately notify the competent minister to that effect.
- (4) If a specified futures commission merchant has given a public notice under paragraph (2), the specified futures commission merchant must promptly complete the transactions in a commodity market which they have conducted on the consignor's account and return the property deposited by the consignor for the transactions in a commodity market and the property which the specified futures commission merchant possesses based on their own account without delay.
- (5) A person who falls under any of the following items is subject to punishment by imprisonment for not more than one year or by a fine of not more than three million yen, or both:
  - (i) a person who has failed to give a public notice under the provisions of paragraph (2) or who has given a false public notice; or
  - (ii) a person who has failed to give a notification under the provisions of paragraph (3) or who has given a false notification.
- (6) If the representative, agent, employee, or other worker of a specified futures commission merchant has committed a violation referred to in the preceding paragraph regarding the business of the specified futures commission market, not only the offender is subject to punishment but also the specified futures

commission merchant is subject to punishment by a fine of not more than three million yen.

- (7) A public notice given and posted pursuant to the provisions of paragraph (2) prior to the date of enforcement is deemed to be a public notice given and posted pursuant to the provisions of Article 197, paragraph (3) of the new Act.

(Transitional Measures for Restriction on the Use of the Name of Commodity Derivatives Business Operator)

Article 9 The provisions of Article 197-2 of the new Act do not apply to a person who was, at the time of the enforcement of this Act, using words in their name or trade name which could give rise to the misconception that the person is a commodity derivatives business operator, for six months after the date of enforcement.

(Transitional Measures for the Obligation to Notify Eligible Consignors)

Article 10 (1) If a commodity derivatives business operator (meaning a commodity derivatives business operator prescribed in Article 2, paragraph (23) of the new Act and including those deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 7, paragraph (3) of the Supplementary Provisions; the same applies hereinafter) has received, for the first time on or after the date of enforcement, an offer of a commodity transaction contract (meaning a commodity transaction contract prescribed in Article 2, paragraph (24) of the new Act; the same applies hereinafter) from a customer (limited to a person set forth in Article 2, paragraph (25), items (vii) and (viii) of the new Act), and the commodity derivatives business operator has notified the customer, prior to the date of enforcement, that the customer may make a request under the provisions of Article 197-4, paragraph (1) of the new Act on or after the date of enforcement, pursuant to the provisions of Article 197-3 of the new Act, the commodity derivatives business operator is deemed to have given a notification prescribed in that Article to the customer.

- (2) If a commodity derivatives business operator has received, for the first time on or after the date of enforcement, an offer of a commodity transaction contract (limited to those regarding commodity derivatives transactions prescribed in Article 2, paragraph (15) of the New Act, for which the underlying commodities prescribed in paragraph (27) of that Article are goods regarding which an eligible commercial person (meaning the eligible commercial person prescribed in paragraph (26) of that Article; hereinafter the same applies in this paragraph) engages in purchase and sale, etc. in the course of trade or other goods specified by order of the competent ministry set forth in Article 197-7 of the New Act as being related to them) from a customer

(limited to an eligible commercial person), and the commodity derivatives business operator has notified the customer, prior to the date of enforcement, that the customer may make a request under the provisions of Article 197-8, paragraph (1) of the new Act on or after the date of enforcement, pursuant to the provisions of Article 197-7 of the new Act, the commodity derivatives business operator is deemed to have given a notification prescribed in that Article to the customer.

(Transitional Measures for Registration of a Sales Representative of a Commodity Derivatives Business Operator)

- Article 11 (1) A sales representative who has already obtained a registration pursuant to the provisions of Article 200, paragraph (1) of the former Act at the time of the enforcement of this Act (limited to one regarding a futures commission merchant who is deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 7, paragraph (2) or (3) of the Supplementary Provisions) is deemed to have obtained a registration pursuant to the provisions of Article 200, paragraph (1) of the new Act on the date of enforcement. In such a case, the provisions of paragraph (6) of that Article do not apply.
- (2) In the case referred to in the preceding paragraph, the period prescribed in Article 200, paragraph (7) of the new Act is to be calculated from the day of registration or renewal of registration under the former Act.
- (3) A commodity derivatives business operator may have a person other than a sales representative who has obtained registration pursuant to the provisions of Article 200, paragraph (1) of the new Act perform the duties of sales representatives (excluding acceptance of consignment or solicitation of consignment of transactions, etc. in a commodity market (meaning transactions, etc. in a commodity market prescribed in Article 2, paragraph (16) of the former Act and excluding commodity clearing transactions prescribed in paragraph (15) of that Article)) for six months from the date of enforcement, notwithstanding the provisions of Article 200, paragraph (2) of the new Act. The same applies if an application for registration under Article 200, paragraph (1) has been filed for the person during that period, until the day on which the commodity derivatives business operator receives a notice to the effect that registration will be granted for the application, or until the day on which the commodity derivatives business operator receives a notice to the effect that registration will not be granted for the application after the lapse of that period.
- (4) A register under the provisions of Article 200, paragraph (5) of the former Act that exists at the time of the enforcement of this Act is deemed to be a register under the provisions of Article 200, paragraph (5) of the new Act.

(Transitional Measures for Delivery of a Document Prior to Conclusion of  
Commodity Transaction Contracts)

Article 12 With regard to a commodity transaction contract concluded on or after the date of enforcement, if a commodity derivatives business operator has delivered a document pursuant to the provisions of Article 217, paragraph (1) of the new Act, concerning matters equivalent to those prescribed in that paragraph, or provided matters that is required to be stated in a document prescribed in that paragraph pursuant to the provisions of paragraph (2) of that Article, prior to the date of enforcement, the commodity derivatives business operator is deemed to have delivered the document pursuant to the provisions of paragraph (1) of that Article.

(Transitional Measures for Obligation of Explanation of Commodity  
Derivatives Business Operators)

Article 13 With regard to a commodity transaction contract concluded on or after the date of enforcement, if a commodity derivatives business operator has provided explanations pursuant to the provisions of Article 218, paragraph (1) of the new Act, concerning matters equivalent to those prescribed in Article 217, paragraph (1) of the new Act, prior to the date of enforcement, the commodity derivatives business operator is deemed to have provided explanations pursuant to the provisions of Article 218, paragraph (1) of the new Act.

(Transitional Measures for the Application for Authorization Regarding  
Mergers)

Article 14 (1) A person who is deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 7, paragraph (2) of the Supplementary Provisions and seeks to obtain authorization under Article 225, paragraph (1) or Article 228, paragraph (1) of the new Act may file an application for the authorization pursuant to the provisions of Article 225 or Article 228 of the new Act even prior to the date of enforcement.

(2) If an application for authorization has been filed pursuant to the provisions of the preceding paragraph, the competent minister may grant the authorization pursuant to the provisions of Article 225 or Article 228 of the new Act even prior to the date of enforcement. In such a case, a person who has obtained the authorization is deemed to have obtained the authorization under Article 225, paragraph (1) or Article 228, paragraph (1) of the new Act on the date of enforcement.

(Transitional Measures for Registration of Commodity Derivatives  
Intermediary Service Providers)

Article 15 (1) A person who has been engaging in specified commodity derivatives intermediation services (meaning to engage in any of the intermediation acts prescribed in Article 2, paragraph (22), items (ii) through (v) of the new Act, entrusted by a commodity derivatives business operator in the course of trade for the commodity derivatives business operator; hereinafter the same applies in this Article) at the time of the enforcement of this Act (hereinafter referred to as a "provisional commodity derivatives intermediary service provider" in this Article) may continue to engage in specified commodity derivatives intermediation services for six months from the date of enforcement (if, during that period, the provisional commodity derivatives intermediary service provider has been rendered a disposition that refuses the registration under Article 240-2, paragraph (1) of the new Act or has been ordered to discontinue their specified commodity derivatives intermediation services pursuant to the provisions of Article 240-23, paragraph (1) of the new Act as applied pursuant to the following paragraph following the deemed replacement of term, until the day on which the disposition is rendered or the discontinuation of services is ordered), notwithstanding the provisions of Article 190, paragraph (1) and Article 240-2, paragraph (1) of the new Act. The same applies, if a provisional commodity derivatives intermediary service provider (limited to those who have not received a disposition that refuses the registration under that Article nor have been ordered to discontinue their specified commodity derivatives intermediation services pursuant to the provisions of Article 240-23, paragraph (1) of the new Act as applied pursuant to the following paragraph following the deemed replacement of terms) has filed an application for registration referred to in Article 240-2, paragraph (1) of the new Act within six months from the date of enforcement, and that period has elapsed, until the time when a disposition that grants or refuses the registration is rendered for the application.

(2) If a provisional commodity derivatives intermediary service provider is to continue to engage in specified commodity derivatives intermediation services pursuant to the provisions of the preceding paragraph, the provisions of Articles 240-12 through 240-22, Article 240-23 (excluding paragraph (1), item (ii)), and Article 240-26 of the new Act (including penal provisions related to these provisions) apply to the provisional commodity derivatives intermediary service provider, by deeming them to be a commodity derivatives intermediary service provider prescribed in Article 2, paragraph (29) of the new Act. In this case, "The fact that they are a commodity derivatives intermediary service provider, and their registration number" in Article 240-13, paragraph (1), item (ii) of the new Act is deemed to be replaced with "The fact that they are a



provisional commodity derivatives intermediary service provider," and "revoke the registration granted to the commodity derivatives service provider under Article 240-2, paragraph (1)" in Article 240-23, paragraph (1) of the new Act is deemed to be replaced with "order the discontinuation of their specified commodity derivatives intermediation services".

- (3) With regard to the application of the provisions of Article 240-5, item (i) of the new Act in cases in which a provisional commodity derivatives intermediary service provider who is an individual, has been ordered to discontinue their specified commodity derivatives intermediation services pursuant to the provisions of Article 240-23, paragraph (1) of the new Act as applied pursuant to the preceding paragraph following the deemed replacement of terms, the person is deemed to be a person falling under Article 15, paragraph (2), item (i), (f) of the new Act until the day on which five years have elapsed from the day on which the person is ordered to discontinue the services.
- (4) With regard to the application of the provisions of Article 240-5, item (ii) of the new Act in cases in which a provisional commodity derivatives intermediary service provider, who is a corporation, has been ordered to discontinue its specified commodity derivatives intermediation services pursuant to the provisions of Article 240-23, paragraph (1) of the new Act as applied pursuant to paragraph (2) following the deemed replacement of terms, the provisional commodity derivatives intermediary service provider, who is a corporation that has been ordered to discontinue the services, is deemed to be a person whose registration under Article 240-2, paragraph (1) of the new Act has been revoked pursuant to the provisions of Article 240-23, paragraph (1) of the new Act, and the day on which the corporation is ordered to discontinue the services is deemed to be the day on which its registration under Article 240-2, paragraph (1) of the new Act has been revoked pursuant to the provisions of Article 240-23, paragraph (1) of the new Act.

(Transitional Measures for Restriction on the Use of the Name of Commodity Derivatives Intermediary Service Provider)

Article 16 The provisions of Article 240-8 of the new Act do not apply to a person who was, at the time of the enforcement of this Act, using a word in their name or trade name which could give give rise to the misconception that the person is a commodity derivatives intermediary service provider, for six months on or after the date of enforcement.

(Transitional Measures for the Authorization for Commodity Futures Associations)

Article 17 (1) If a commodity futures association prescribed in Article 241, paragraph (1) of the former Act (hereinafter referred to as an "association

under the former Act" in this paragraph) has already been established at the time of the enforcement of this Act, or an association under the former Act has been established during the period from the date of promulgation of this Act to the day preceding the date of enforcement, the association under the former Act may change its articles of incorporation, sanction rules, and dispute resolution rules necessary to become a commodity futures association prescribed in Article 241, paragraph (1) of the new Act, and receive the authorization of the competent minister by that day.

- (2) If authorization referred to in the preceding paragraph is granted, the changes to the articles of incorporation, sanction rules, and dispute resolution rules prescribed in that paragraph come into effect on the date of enforcement.
- (3) A person who is deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 7, paragraph (2) of the Supplementary Provisions may file an application for authorization under Article 245 of the new Act pursuant to the provisions of Article 247 of the new Act even prior to the date of enforcement.
- (4) If an application for authorization is filed pursuant to the provisions of the preceding paragraph, the competent minister may grant the authorization even prior to the date of enforcement pursuant to the provisions of Articles 245 through 248 of the new Act. In such a case, the person who has obtained the authorization is deemed to have obtained the authorization under Article 245 of the new Act on the date of enforcement.

(Transitional Measures for the Consignor Protection Fund)

- Article 18 (1) A person (limited to a person who is deemed to have obtained a license under Article 190, paragraph (1) of the new Act pursuant to the provisions of Article 7, paragraph (2) of the Supplementary Provisions and who seeks to engage in the acts set forth in Article 2, paragraph (22), item (i) or (ii) of the new Act in the course of trade at a business office or office in Japan) who seeks to become a founder or a member of a consignor protection fund prescribed in Article 270 of the new Act (hereinafter referred to as a "new consignor protection fund" in this Article through Article 22 of the Supplementary Provisions) may prepare articles of incorporation, hold an organizational meeting, and perform other acts necessary for establishing the new consignor protection fund, acts necessary for joining the new consignor protection fund, and acts necessary for the operation of the business of the new consignor protection fund for the business year that includes the date of its establishment, pursuant to the provisions of Chapter VI (excluding Articles 279 and 280) of the new Act, even prior to the date of enforcement.
- (2) A founder of a new consignor protection fund may file an application for authorization for establishing the new consignor protection fund and obtain the

authorization of the competent minister pursuant to the provisions of Articles 279 and 280 of the new Act, even prior to the date of enforcement. In such a case, the authorization becomes effective as of the date of enforcement.

Article 19 (1) A consignor protection fund prescribed in Article 296 of the former Act (hereinafter referred to as a "former consignor protection fund") may become a new consignor protection fund by changing its articles of incorporation and performing other acts necessary to become a new consignor protection fund, and by obtaining the authorization of the competent minister pursuant to the provisions of Articles 279 and 280 of the new Act, during the period from the date of enforcement of the provisions set forth in Article 1, item (iii) of the Supplementary Provisions to the day preceding the effective date (referred to as the "transitional period" in the following Article).

(2) The authorization referred to in the preceding paragraph becomes effective on the date of enforcement.

(3) With regard to the application of the new Act to a former consignor protection fund that has obtained the authorization under paragraph (1), the authorization referred to in that paragraph is deemed to be the authorization for establishing a new consignor protection fund.

(4) The necessary particulars for the registration of a former consignor protection fund that has obtained the authorization under paragraph (1) are specified by Cabinet Order.

(5) A new consignor protection fund related to a former consignor protection fund that has obtained the authorization under paragraph (1) may conduct businesses specified by order of the competent ministry as being businesses similar to those set forth in Article 300, item (i) of the new Act, notwithstanding the provisions of that Article. In such a case, the provisions of Article 313 and Article 374, item (xxi) of the new Act apply to those businesses by deeming them to be businesses set forth in that item.

(6) Beyond what is provided for in the preceding paragraphs, necessary particulars for the authorization set forth in paragraph (1) are specified by Cabinet Order.

Article 20 (1) A former consignor protection fund which has not obtained the authorization under paragraph (1) of the preceding Article during the transitional period is dissolved on the expiration date of the transitional period, notwithstanding the provisions of Articles 290 and 312 of the former Act.

(2) With regard to dissolution and liquidation in the case referred to in the preceding paragraph, the provisions of Articles 291 and 292 of the former Act remain in force. In such a case, the phrase "consignor protection fund (meaning a consignor protection fund prescribed in Article 296)" in that Article is deemed

to be replaced with "consignor protection fund (meaning a consignor protection fund prescribed in Article 270 of the Commodity Derivatives Transaction Act)".

(3) Beyond what is provided for in the preceding two paragraphs, necessary particulars concerning a former consignor protection fund which has not obtained the authorization under paragraph (1) of the preceding Article are specified by Cabinet Order.

Article 21 If a former consignor protection fund has obtained the authorization under Article 19, paragraph (1) of the Supplementary Provisions, the provisions of Articles 302 through 311 of the new Act apply to a person who is deemed, at the time of the enforcement of this Act, to be a futures commission merchant that is a member of the former consignor protection fund pursuant to the provisions of Article 300, paragraph (1) of the former Act, by deeming the person to be a commodity derivatives business operator that is a member of a new consignor protection fund related to the former consignor protection fund.

(Transitional Measures for the Payment to a General Consignor)

Article 22 If a former consignor protection fund has obtained the authorization under Article 19, paragraph (1) of the Supplementary Provisions, payment to be made by the former consignor protection fund, prior to the date of enforcement to a general consignor of a futures commission merchant related to the certification under Article 304 of the former Act is to be made by a new consignor protection fund related to the former consignor protection fund pursuant to the provisions then in force.

(Transitional Measures for Notification by Specified Over-The-Counter Commodity Derivatives Business Operators)

Article 23 A person who is engaging in specified over-the-counter commodity derivatives transactions (meaning specified over-the-counter commodity derivatives transactions prescribed in Article 349, paragraph (1) of the new Act; hereinafter the same applies in this Article) in the course of trade at the time of the enforcement of this Act may engage in specified over-the-counter commodity derivatives transactions in the course of trade without making a notification under that paragraph, for one month from the date of enforcement.

(Effect of Dispositions)

Article 24 The dispositions made, procedures taken, and other acts performed pursuant to the provisions of the respective laws prior to amendment (including orders based on them; hereinafter the same applies in this Article) prior to the enforcement of this Act (for the provisions set forth in each item of Article 1 of the Supplementary Provisions, the relevant provisions; the same

applies in the following Article.), for which corresponding provisions exist in the amended laws, are deemed to have been made, taken, or performed pursuant to the corresponding provisions of the respective laws after the amendment, except as otherwise provided for by these Supplementary Provisions.

(Transitional Measures for the Application of Penal Provisions)

Article 25 Prior laws continue to govern the application of penal provisions to acts committed prior to the enforcement of this Act and acts committed after the enforcement of this Act for which the provisions previously in force are to remain applicable pursuant to the provisions of these Supplementary Provisions.

Article 26 Deleted

Article 27 Deleted

(Delegation of Other Transitional Measures to Cabinet Order)

Article 28 In addition to what is provided for in Articles 3 through 25 of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act (including transitional measures regarding penal provisions) are specified by Cabinet Order.

(Review)

Article 29 The government is to review the commodity derivatives system amended by this Act within five years after the enforcement of this Act, taking into account of the implementation status of the provisions amended by this Act and the changes in social and economic situations surrounding commodity derivatives, and when the government finds it necessary, is to take the required measures based on the results of the review.

### **Supplementary Provisions [Act No. 32 of May 19, 2010 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item.

- (i) the provisions amending Article 2, paragraph (28) of the Financial Instruments and Exchange Act in Article 1 (limited to the part that amends the phrase ", derivative transactions or other transactions specified by a

Cabinet Order" to ", derivative transactions (excluding transactions specified by Cabinet Order as those that are found not to hinder the public interest or protection of investors, taking into account of the status of transactions, impact on the Japanese capital market, and other circumstances), or other transactions specified by a Cabinet Order as being incidental or related to the transactions") and the provisions amending Article 205-2-3, item (ix) of that Act; the provisions of Article 4; the provisions amending Article 49, paragraphs (1) and (2) of the Trust Business Act in Article 5; the provisions of Articles 13 and 14 of the Supplementary Provisions: the date of promulgation.

(Adjustment Provisions upon Partial Amendment of the Commodity Derivatives Transaction Act)

Article 7 (1) If the date of enforcement is prior to the date on which the Act for Partial Revision of the Commodity Exchange Act and the Act on Regulations of Business Regarding Commodities Investment (Act No. 74 of 2009) comes into effect, in the preceding Article (including the title), "Commodity Derivatives Transaction Act" is deemed to be replaced with "Commodity Exchange Act," ", over-the-counter commodity derivatives transactions" is deemed to be replaced with "or over-the-counter commodity derivatives transactions," "has taken over" is deemed to be replaced with "has taken over," and "business of assuming commodity transaction debts, etc." is deemed to be replaced with "business of assuming commodity transaction debts".

(2) In the case prescribed in the preceding paragraph, in Article 3 of the Act for Partial Revision of the Commodity Exchange Act and the Act on Regulations of Business Regarding Commodities Investment, in the provisions that amend Article 181, paragraph (1) of the Commodity Exchange Act (Act No. 239 of 1950), ", over-the-counter commodity derivatives transactions" is deemed to be replaced with "or over-the-counter commodity derivatives transactions," and "adds ..." to "adds ..., and amends the term 'business of assuming commodity transaction debts' to 'business of assuming commodity transaction debts, etc.'".

(Transitional Measures for the Application of Penal Provisions)

Article 13 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act (for the provisions set forth in the items of Article 1 of the Supplementary Provisions, the relevant provisions).

(Delegation to Cabinet Order)

Article 14 In addition to what is provided for in Articles 2 through 5 and the preceding Article of the Supplementary Provisions, transitional measures

necessary for the enforcement of this Act (including transitional measures regarding penal provisions) are specified by Cabinet Order.

(Review)

Article 15 The government is to review the implementation status of the provisions amended by this Act within five years after the enforcement of this Act, and when the government finds it necessary, is to take the required measures based on the results of the review.

**Supplementary Provisions [Act No. 53 of May 25, 2011]**

This Act comes into effect as of the date on which the new Non-Contentious Cases Procedures Act comes into effect.

**Supplementary Provisions [Act No. 61 of June 3, 2011 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation (hereinafter referred to as the "date of enforcement").

**Supplementary Provisions [Act No. 74 of June 24, 2011 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day on which 20 days have elapsed from the date of promulgation.

**Supplementary Provisions [Act No. 86 of September 12, 2012 Extract] [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding one year and six months from the date of promulgation; provided, however, that the provisions set forth in the following items come into effect as of the date specified in each item.

- (i) the provisions of Article 4, paragraph (13) and Article 18 of the Supplementary Provisions: the date of promulgation;
- (ii) the provisions of Article 1 and the following Article of this Act and Article 17 of the Supplementary Provisions: the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

(Transitional Measures for the Application of Penal Provisions)

Article 17 Prior laws continue to govern the applicability of penal provisions to acts committed prior to the enforcement of this Act (for the provisions set forth in Article 1, items (ii) and (iii) of the Supplementary Provisions, the relevant provisions).

(Delegation to Cabinet Order)

Article 18 In addition to what is provided for in Articles 2 through 5 and the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act (including transitional measures regarding penal provisions) are specified by Cabinet Order.

(Review)

Article 19 The government is to review the implementation status of the provisions amended by this Act within five years after the enforcement of this Act, and when the government finds it necessary, is to take the required measures based on the results of the review.