

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

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

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

(Definitions)

Article 1 The terms, "Sale(s) of Financial Instruments," "Sale(s), etc. of Financial Instruments," "Financial Instruments Provider, etc.," "Customer," and "Solicitation Policy," as used in this Cabinet Order, mean, respectively, the sale(s) of financial instruments, sale(s), etc. of financial instruments, financial instruments provider, etc., customer, and solicitation policy prescribed in Articles 2, paragraph (1) to paragraph (4) and Article 9, paragraph (1) of the Act on the Sale, etc. of Financial Instruments (hereinafter referred to as the "Act").

(Requirements for a Money Trust)

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

(Contract for Insurance or Mutual Aid)

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

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

- (viii) Private School Personnel Mutual Aid Association Act (Act No. 245 of 1953);
- (ix) Employees' Pension Insurance Act (Act No. 115 of 1954; excluding Article 130-2, paragraph (1); Article 136-3, paragraph (1), item (ii) (including when applied mutatis mutandis pursuant to Article 164, paragraph (3) of the same Act); and Article 159-2, paragraph (1) of the same Act);
- (x) Housing Loan Insurance Act (Act No. 63 of 1955);
- (xi) Act on Mutual Aid Association for Liabilities for Occupational Accident Compensation for Firefighters, etc. (Act No. 107 of 1956);
- (xii) National Public Officers Mutual Aid Association Act (Act No. 128 of 1958);
- (xiii) National Health Insurance Act (Act No. 192 of 1958);
- (xiv) National Pension Act (Act No. 141 of 1959; Excluding Chapter X);
- (xv) Small and Medium Sized Enterprise Retirement Allowance Cooperative Act (Act No. 160 of 1959);
- (xvi) Act on Mutual Aid Association for Retirement Allowances of Personnel of Social Welfare Facilities, etc. (Act No. 155 of 1961);
- (xvii) Agricultural Credit Guarantee Insurance Act (Act No. 204 of 1961);
- (xviii) Local Public Officers, etc. Mutual Aid Association Act (Act No. 152 of 1962);
- (xix) Small Enterprise Mutual Relief Projects Act (Act No. 102 of 1965);
- (xx) Act on the Farmers Pension Fund, Independent Administrative Agency (Act No. 127 of 2002);
- (xxi) Deposit Insurance Act (Act No. 34 of 1971);
- (xxii) Agricultural and Fishery Cooperation Savings Insurance Act (Act No. 53 of 1973);
- (xxiii) Employment Insurance Act (Act No. 116 of 1974);
- (xxiv) Act on Mutual Relief System for the Prevention of Bankruptcies of Small and Medium-sized Enterprises (Act No. 84 of 1977);
- (xxv) Act on the National Agency for the Advancement of Sports and Health, Independent Administrative Agency (Act No. 162 of 2002);
- (xxvi) Long-Term Care Insurance Act (Act No. 123 of 1997);
- (xxvii) Act on Temporary Measures concerning Special Provisions of Credit Insurance for Medium-sized Enterprise Financed by Bankrupt Financial Institution (Act No. 151 of 1998).

(Transactions in Which the Parties Promise to Pay or Receive the Difference)
 Article 4 Transactions specified by Cabinet Order that are referred to in Article 2, paragraph (1), item (x) of the Act are transactions wherein the parties thereto promise to pay and receive money calculated based on the difference between the figure to which the parties have agreed in advance as the money rate, the value of currencies, or any other indicator, and the actual figure of

the indicator at a fixed time in the future (excluding futures transactions prescribed in Article 2, paragraph (8) of the Commodity Exchange Act (Act No. 239 of 1950) and Counter Commodity Futures Transactions prescribed in Article 349, paragraph (6) of the same Act (hereinafter referred to as "commodity futures transactions, etc." in item (ii) of the following Article)).

(Acts that Constitute the Sale of Financial Instruments)

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

- (i) conclusion of a trust contract (limited to when the beneficial interest under the trust contract is a right listed in Article 2, paragraph (2), item (i) or item (ii) of the Financial Instruments and Exchange Act (Act No. 25 of 1948)) involving a trust other than a money trust for which the method of managing the trust property has not been specified, with the settler;
- (ii) financial derivative transactions (excluding transactions set forth in the preceding Article, commodity futures transactions, etc., and transactions prescribed in the following item) prescribed in Article 10, paragraph (2), item (xiv) of the Banking Act (Act No. 59 of 1981), or brokerage for such transactions;
- (iii) the following transactions executed on a foreign commodities market (meaning a foreign commodities market as prescribed in Article 2, paragraph (2) of the Act on the Assumption of Entrustment, etc. for Futures Trading on a Foreign Commodities Market (Act No. 65 of 1982); hereinafter the same applies in this item) in accordance with the standards and methods specified by the person who established the foreign commodities market, and brokerage for such transactions:
 - (a) a transaction wherein the parties promise to deliver and receive a product (meaning a product prescribed in Article 2, paragraph (2) of the Act on the Assumption of Entrustment, etc. for Futures Trading on a Foreign Commodities Market; hereinafter the same applies in this item) and consideration for the product at a fixed time in the future, and wherein the resale or repurchase of the underlying product can be settled by the payment and receipt the difference;
 - (b) a transaction wherein one of the parties grants the other party the option to effect a transaction between them that is listed in (a) or (d) by unilaterally manifesting the intention to effect the transaction and wherein the other party promises to pay consideration for this option, or any other similar transaction;
 - (c) a transaction wherein one of the parties grants the other party the option to, by unilaterally manifesting the intention to effect the relevant transaction, effect a transaction between them wherein the parties pay and

receive an amount of money calculated based on the difference between the figure that the parties have agreed in advance to use as a commodity index (meaning a figure that comprehensively expresses the price level of two or more commodities; hereinafter the same applies in this item) or commodity price if other party manifests the intention to effect the transaction and the actual figure of the commodity index or commodity price at the time that the other party manifests that intention, and wherein the other party promises to pay consideration for this option, or any other similar transaction;

- (d) a transaction wherein the parties promise each other that, for a commodity of a quantity that the parties have specified, one of the parties will pay the amount of money calculated based on the rate of change during the agreed period for the following figures as agreed upon with the other party, and the other party will pay the amount of money calculated based on the rate of change during the agreed period for the following figures as agreed upon with the first party, and any other similar transactions:
1. the figure for the commodity index;
 2. the figure for the commodity price.

(Scope of Articles Equivalent to Money)

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

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

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

(Structure of Transactions Involving the Sale of Financial Instruments)

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

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

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

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

(Specified Customer)

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

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

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

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

(ii) Agricultural Cooperatives Act (Act No. 132 of 1947), Article 11-2-4 or 11-10-3;

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

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

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

(Method for Publicizing a Solicitation Policy)

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

- (i) if the financial instruments provider, etc. executes sales, etc. of financial instruments at its business office, office or any other place (excluding its head office or principal office; hereinafter referred to as a "business office,

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

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