

Cabinet Office Ordinance on Financial Instruments Clearing Organizations, etc.

(Cabinet Office Ordinance No. 76 of December 6, 2002)

Pursuant to the provisions of Article 2, paragraph (25), item (ii), Article 156-3, paragraph (2), item (vii) and paragraph (3), Article 156-6, paragraphs (2) and (3), Article 156-7, paragraph (2), item (vii), Article 156-11, Article 156-12, Article 156-13, Article 156-18, Article 156-19 and Article 188 of the Securities and Exchange Act (Act No. 25 of 1948), and for the purpose of enforcing said Act, the Cabinet Office Ordinance on Financial Instruments Clearing Organization, etc. is established as follows.

(Definitions)

Article 1 "Financial Instruments Clearing Organization", "Financial Instruments Debt Assumption Service", "Brokerage for Clearing of Securities, etc.", "Market Transactions of Derivatives" and "Financial Instruments Exchange" as used in this Cabinet Office Ordinance mean Financial Instruments Clearing Organization, Financial Instruments Debt Assumption Service, Brokerage for Clearing of Securities, etc., Market Transactions of Derivatives and Financial Instruments Exchange, respectively, as prescribed in Article 2 of the Financial Instruments and Exchange Act (Act No. 25 of 1948; hereinafter referred to as the "Act").

(Route of Written License Application)

Article 2 A person who intends to submit a written license application pursuant to the provision of Article 156-3, paragraph (1) of the Act must submit said written license application via the Commissioner of the Financial Services Agency.

(Documents to be Attached to Written License Application)

Article 2-2 Documents specified by Cabinet Office Ordinance prescribed in Article 156-3, paragraph (2), item (vii) of the Act shall be the following documents:

- (i) a document stating the name or trade name of a Major Shareholder (meaning a shareholder that holds voting rights constituting ten percent or more of all shareholders' voting rights (excluding voting rights in respect of shares that do not allow voting rights to be exercised with regard to all matters that can be resolved at a shareholders meeting and including voting rights in respect of shares that are deemed to have voting rights pursuant to

the provision of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); the same shall apply in Article 14, paragraph (2), item (v))), its address or location and the number of voting rights held by such a Major Shareholder;

- (ii) a document stating an outline of parent corporation (meaning a juridical person or other organization holding a majority of all shareholders' voting rights (meaning voting rights prescribed in the preceding item) of a Financial Instruments Clearing Organization) and subsidiary corporation (meaning a juridical person or other organization in which a majority of the voting rights of all shareholders, all members, or all equity investors (in the case of a stock company, excluding voting rights in respect of shares that do not allow voting rights to be exercised with regard to all matters that can be resolved at a shareholders meeting and including voting rights in respect of shares that are deemed to have voting rights pursuant to the provision of Article 879, paragraph (3) of the Companies Act) is held by a Financial Instruments Clearing Organization);
- (iii) Resumes and extracts of residence certificate (limited to those stating the registered domicile) of directors and company auditors (or, in a Company with Committees, directors and executive officers; hereinafter the same shall apply in this item) or other documents in lieu thereof and documents in which said directors and company auditors pledge that they do not fall under any of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (g) inclusive of the Act;
- (iv) In a company with accounting advisors, resumes of accounting advisors (if the accounting advisor is a juridical person, a document stating the history of said accounting advisor) and extracts of residence certificate (limited to those stating the registered domicile) of accounting advisors or other documents in lieu thereof (if the accounting advisor is a juridical person, a certificate of registered information of said accounting advisor or other documents in lieu thereof) and a document in which said accounting advisors pledge that they do not fall under any of the categories in Article 29-4, paragraph (1), item (ii), sub-items (a) to (g) inclusive of the Act;
- (v) a document stating the business of which each of directors (or, in a Company with Committees, executive officers) is in charge;
- (vi) a document stating the status of securing employees who have knowledge and experience related to Financial Instruments Debt Assumption Service and assignment status of said employees;
- (vii) a document stating the organization and division of business of Financial Instruments Clearing Organization;
- (viii) a document stating the expected income and expenditures for three years after the commencement of business; and

- (ix) other documents stating matters that will be helpful for examination under the provision of Article 156-4, paragraph (1) of the Act.

(Electronic and Magnetic Records to be Attached to Written License Application)

Article 3 (1) The electronic or magnetic record specified by Cabinet Office Ordinance prescribed in Article 156-3, paragraph (3) of the Act shall be a magnetic disk whose structure corresponds to a ninety millimeter flexible disk cartridge compliant with Japanese Industrial Standards (hereinafter referred to as "JIS" in this Article) X6223 based on the Industrial Standardization Act (Act No. 185 of 1949).

- (2) Recording in the electronic or magnetic record referred to in the preceding paragraph shall be done in accordance with the following methods.
 - (i) Track format: Method prescribed in JIS X6225
 - (ii) Volume and file composition: Method prescribed in JIS X0605
- (3) The electronic or magnetic record referred to in paragraph (1) shall have a document stating the following matters pasted in the label area prescribed in JIS X6223:
 - (i) trade name of applicant; and
 - (ii) application date.

(Application for Approval for Other Business)

Article 4 (1) A Financial Instruments Clearing Organization that intends to obtain the approval referred to in Article 156-6, paragraph (2) of the Act must submit a written application for approval stating the following matters to the Commissioner of the Financial Services Agency:

- (i) type of business for which approval is to be obtained; and
 - (ii) scheduled date of commencement of said business.
- (2) The following documents shall be attached to the written application for approval referred to in the preceding paragraph:
 - (i) a document stating the contents and methods of said business;
 - (ii) a document stating the organization and assignment of personnel having jurisdiction over said business;
 - (iii) internal rules on operation of said business; and
 - (iv) a document stating the expected income and expenditures for three years after the commencement of said business.

(Notification of Discontinuation of Approved Business)

Article 5 A Financial Instruments Clearing Organization that intends to make a notification pursuant to the provision of Article 156-6, paragraph (3) of the Act must submit a notification stating the following matters:

- (i) type of business for which approval was obtained pursuant to the provision of Article 156-6, paragraph (2) of the Act;
- (ii) date on which said business was discontinued; and
- (iii) reason for discontinuing said business.

(Matters to be Stated in Business Rules)

Article 6 Matters specified by Cabinet Office Ordinance prescribed in Article 156-7, paragraph (2), item (vii) of the Act shall be the following matters.

- (i) In cases where a business incidental to Financial Instruments Debt Assumption Service is to be conducted, a statement to that effect
- (ii) In cases where a business related to Financial Instruments Debt Assumption Service is to be conducted, a statement to that effect
- (iii) A statement to the effect that, in a basic contract pertaining to Brokerage for Clearing of Securities, etc. (limited to those pertaining to Article 2, paragraph (27), item (i) of the Act) between a Clearing Participant that provides said Brokerage for Clearing of Securities, etc. and a customer, if the customer intends to have the subject transaction effected on behalf of the Clearing Participant, it is deemed that the customer offered for Brokerage for Clearing of Securities, etc. and that the Clearing Participant accepted the entrustment of said Brokerage for Clearing of Securities, etc.
- (iv) In cases where a Financial Instruments Debt Assumption Service is to be provided for Market Transactions of Derivatives, matters relating to clearing margins
- (v) In cases where provisions for a Clearing Deposit prescribed in Article 156-11 of the Act are made, the following matters:
 - (a) matters related to Securities specified as a Clearing Deposit pursuant to the provision of the following Article; and
 - (b) matters related to the management method of the Clearing Deposit.

(Clearing Deposit)

Article 7 Those specified by Cabinet Office Ordinance prescribed in Article 156-11 of the Act shall be money and Securities specified by a Financial Instruments Clearing Organization in its business rules; and shall be managed as Clearing Deposit separately from other property by said Financial Instruments Clearing Organization pursuant to the provisions of its business rules.

(Application for Authorization of Amendment of the Articles of Incorporation or Business Rules)

Article 8 (1) A Financial Instruments Clearing Organization that intends to obtain authorization referred to in Article 156-12 of the Act must submit a

written application for authorization stating the following matters to the Commissioner of the Financial Services Agency:

- (i) contents of and reason for the amendment; and
- (ii) scheduled date of the amendment.

(2) The following documents must be attached to the written application for authorization referred to in the preceding paragraph; provided, however, that for a written application for authorization to amend the business rules, submission of the documents specified in item (ii) shall not be required:

- (i) a table that compares new articles of incorporation or business rules with old ones;
- (ii) minutes of the shareholders meeting (or, in the case of a Membership-Type Financial Instruments Exchange (meaning a Membership-Type Financial Instruments Exchange prescribed in Article 87-6, paragraph (1) of the Act; the same shall apply hereinafter) that has obtained a approval based on the provisions of Article 156-19 of the Act, the general meeting) or other document proving that necessary procedures had been taken; and
- (iii) other documents that will be helpful.

(Criteria for Authorization of Amendment of the Articles of Incorporation or Business Rules)

Article 9 The Commissioner of the Financial Services Agency must examine whether said application conforms to laws and regulations and is sufficient to conduct business appropriately and certainly, if there has been an application for authorization based on the provisions of Article 156-12 of the Act,.

(Notification of Change of Amount of the Stated Capital,)

Article 10 (1) A Financial Instruments Clearing Organization that intends to make a notification under the provisions of Article 156-13 of the Act must submit a notification stating the following matters to the Commissioner of the Financial Services Agency:

- (i) contents of change; and
- (ii) date of change.

(2) According to the categories specified in the following items, the documents specified therein shall be attached to the notification referred to in the preceding paragraph.

- (i) Change of matters specified in Article 156-3, paragraph (1), item (ii) or (iii) of the Act: Documents specified in paragraph (2), item (iii) of that Article
- (ii) Change of matters specified in Article 156-3, paragraph (1), item (iv) of the Act: Documents specified in paragraph (2), item (iii) of that Article and documents specified in Article 2-2, item (iii)
- (iii) Change of matters specified in Article 156-3, paragraph (1), item (v) of the

Act: Documents specified in paragraph (2), item (iii) of that Article and documents specified in Article 2-2, item (iv)

(Application for Authorization of Resolution of Abolition or Dissolution of Financial Instruments Debt Assumption Service)

Article 11 A Financial Instruments Clearing Organization that intends to obtain the authorization referred to in Article 156-18 of the Act must attach the following documents to the written application for authorization and submit the same to the Commissioner of the Financial Services Agency:

- (i) a document stating the reason for abolition or dissolution of Financial Instruments Debt Assumption Service;
- (ii) minutes of the shareholders meeting (or, in the case of a Membership-Type Financial Instruments Exchange, the general meeting) (in cases where a resolution of the shareholders meeting is deemed to have been made pursuant to the provisions of Article 319, paragraph (1) of the Companies Act, a document proving that said cases apply)
- (iii) balance sheet (including related notes) and profit and loss statement (including related notes) for last business year as well as a document clarifying what assets and liabilities consisted of as at the time of said resolution;
- (iv) a document stating the method of completion of Financial Instruments Debt Assumption Service; and
- (v) other documents stating matters that will be useful.

(Application for Approval of Financial Instruments Debt Assumption Service by Financial Instruments Exchange)

Article 12 (1) A Financial Instruments Exchange that intends to obtain the approval referred to in Article 156-19 of the Act must submit a written application for approval stating the following matters to the Commissioner of the Financial Services Agency:

- (i) type of business for which approval is to be obtained; and
 - (ii) scheduled date of commencement of said business.
- (2) The following documents must be attached to the written application for approval referred to in the preceding paragraph:
- (i) business rules;
 - (ii) a document stating the organization and assignment of personnel having jurisdiction over said business; and
 - (iii) a document stating the expected income and expenditures for three years after the commencement of said business.

(Notification of Rules based on Business Rules)

Article 13 When a Financial Instruments Clearing Organization has established, abolished or amended rules based on its business rules, it must notify the Commissioner of the Financial Services Agency to that effect without delay.

(Documents concerning Business to be Submitted)

Article 14 (1) A Financial Instruments Clearing Organization must submit the financial statements and business report prescribed in Article 435, paragraph (2) of the Companies Act based on the provisions of Article 188 of the Act within three months after the end of each business year to the Commissioner of the Financial Services Agency.

(2) The following documents shall be attached to the documents to be submitted pursuant to the provisions of the preceding paragraph:

- (i) annexed detailed statements referred to in Article 435, paragraph (2) of the Companies Act;
- (ii) detailed statement of Clearing Deposit;
- (iii) detailed statement of clearing margin (limited to Financial Instruments Clearing Organizations that provide Financial Instruments Debt Assumption Service for Market Transactions of Derivatives);
- (iv) other detailed statements for various accounts; and
- (v) a document stating the name or trade name and address or location of Major Shareholder and the number of voting rights held by that shareholder.

(3) In cases where a Financial Instruments Exchange conducts business as a Financial Instruments Clearing Organization with the approval from the Prime Minister pursuant to the provisions of Article 156-19 of the Act, if said Financial Instruments Exchange submits the documents specified in the preceding two paragraphs or documents equivalent thereto (excluding the documents specified in item (ii) of the preceding paragraph) within the period referred to in paragraph (1), notwithstanding the provisions of the preceding two paragraphs, said Financial Instruments Exchange shall not be required to submit the documents specified in said paragraphs (excluding the documents specified in item (ii) of the preceding paragraph).

(4) If a fact listed in any of the following items (referred to as "Problematic Conduct" in the following paragraph) has occurred, a Financial Instruments Clearing Organization must immediately report to the Commissioner of the Financial Services Agency to said fact pursuant to the provisions of Article 188 of the Act:

- (i) violation of laws and regulations or business rules by a director, accounting advisor (or, if the accounting advisor is a juridical person, including the member who is supposed to conduct the duty), company auditor, executive officer or employee upon executing the operations; or
- (ii) suspension of all or part of Financial Instruments Debt Assumption Service

due to failure of the electronic data processing system or other unforeseeable circumstances.

- (5) A Financial Instruments Clearing Organization must submit a document containing the following matters pursuant to the provisions of Article 188 of the Act to the Commissioner of the Financial Services Agency without delay ,if the details of the Problematic Conduct reported pursuant to the provisions of the preceding paragraph are found:
- (i) details of the Problematic Conduct;
 - (ii) improvement measures for the Problematic Conduct; and
 - (iii) other necessary matters.

(Standard Processing Period)

- Article 15 (1) The Prime Minister or the Commissioner of the Financial Services Agency shall endeavor to process an application for approval prescribed in Article 156-6, paragraph (2) of the Act or authorization prescribed in Article 156-12 of the Act or Article 156-18 of the Act within one month of the arrival of said application at said office, and an application for license prescribed in Article 156-3, paragraph (1) of the Act or approval prescribed in Article 156-19 of the Act within two months of the arrival of said application at said office.
- (2) The period prescribed in the preceding paragraph shall not include the following periods:
- (i) period required to make corrections to said application;
 - (ii) period required by the person who filed said application to change the content of said application; and
 - (iii) period required by the person who filed said application to add materials deemed necessary for examination of said application.